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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-935

PEGGY J. CONNOR, ET AL., *Appellants*

v.

CLIFF FINCH, GOVERNOR OF MISSISSIPPI, ET AL.

On Appeal from the United States District Court for the Southern District of Mississippi

JURISDICTIONAL STATEMENT

FRANK R. PARKER
THOMAS J. GINGER
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

ROBERT A. MURPHY
ELIZABETH R. RINDSKOPF
WILLIAM E. CALDWELL
Lawyers' Committee for
Civil Rights Under Law
Suite 520 Woodward Building
733 Fifteenth Street, N.W.
Washington, D.C. 20005

Attorneys for Appellants

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JURISDICTIONAL STATEMENT

Appellants, black citizens and registered voters of Mississippi, appeal from the final judgment of the United States District Court for the Southern District of Mississippi, entered on November 18, 1976, as amended by order of December 21, 1976. Appellants contend that the single-member legislative districts for the Mississippi Senate and House of Representatives promulgated by the District Court fail to meet constitutional and legal requirements for court-ordered legislative reapportionment plans by (1) failing to provide the greatest practicable equality of population among the districts, and (2) dispersing and diluting black voting strength.

Appellants have also, in a separate appeal in which probable jurisdiction was noted by this Court on December 8, 1976, No. A-421, appealed from the failure of the District Court in its final judgment of November 18, 1976, to order more than two special legislative elections to cure the dilution of black voting strength and malapportionment present in prior court-ordered legislative reapportionment plans.

OPINIONS BELOW

After the District Court stayed all proceedings on January 29, 1976, and after, on petition for a writ of mandamus, this Court instructed the District Court that there was "no justification . . . for delaying further a final decision in this long-pending case . . . ," *Connor* v. *Coleman*, No. 75-1184 (May 19, 1976), the District Court on August 24 and September 8 promulgated court-ordered legislative reapportionment plans for the Mississippi Senate and House of Representatives, respectively. An opinion altering certain districts was entered November 12, and final judgment was entered November 18. An order amending the final judgment and altering certain districts was entered December 21. These opinions, judgment, and order have not yet been reported and are attached hereto in the Appendix.

JURISDICTION

This action was originally filed as a class action on October 19, 1965, challenging the then-existing state constitutional and statutory provisions establishing state legislative and congressional districts and seeking constitutional and equitable reapportionment of

state legislative and congressional districts pursuant to the Fourteenth and Fifteenth Amendments and 42 U.S.C. §§ 1983 and 1988. Jurisdiction is based on 28 U.S.C. §§ 1343 and 2201 and 2202. A three-judge District Court was convened pursuant to 28 U.S.C. § 2281. The final judgment of the District Court was entered on November 18, 1976. A notice of appeal on the issue of special elections was filed the same day. An order amending the final judgment was entered December 21, and plaintiffs filed their second notice of appeal on December 27. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1253. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Chapman* v. *Meier*, 420 U.S. 1 (1975); *White* v. *Regester*, 412 U.S. 755 (1973); *Baker* v. *Carr*, 369 U.S. 186 (1962).

QUESTIONS PRESENTED

1. Whether the District Court erred in ordering into effect a court-devised Mississippi Senate reapportionment plan based not on 1970 Census data, but on the election returns for the 1975 Democratic gubernatorial primary, which provided a total deviation of 16.5%, and which in certain districts diluted black voting strength, rather than ordering plaintiffs' proposed alternative Senate plan based on 1970 Census data which provided a total deviation of only 13.7%, which adhered more closely to political subdivision boundaries than the court's own plan, and which avoided the dilution of black voting strength in the court's plan.

2. Whether the District Court erred in rejecting—without a hearing or stating reasons therefor—plain-

tiffs' and plaintiff-intervenor's objections that certain districts in the court-devised House plan were malapportioned and/or diluted black voting strength, and in rejecting proposed alternatives which cured the malapportionment and dilution in the court's districts without disrupting the structure of the court's House plan.

3. Whether in the face of the 1975 attorneys' fee amendment to the Voting Rights Act of 1965, 42 U.S.C. § 1973*l*(e), and the Civil Rights Attorneys' Fees Awards Act of 1976, P.L. 94-559, 90 Stat. 2641 (October 19, 1976), the District Court erred in denying plaintiffs' motion for an award of attorneys' fees on a finding that the Mississippi Legislature had made a good faith effort to reapportion itself.

STATUTES INVOLVED

U.S. Constitution, Fourteenth and Fifteenth Amendments; 42 U.S.C. §§ 1983 and 1988; 42 U.S.C. § 1973 *l*(e) (1975); P.L. 94-559, 90 Stat. 2641 (1976).

STATEMENT OF THE CASE

A. Prior Proceedings

Commenced more than eleven years ago, a year after this Court's landmark decision in *Reynolds* v. *Sims*, 377 U.S. 533 (1964), this case has dragged on through three four-year state legislative terms and is now into a fourth without providing plaintiffs the full and effective relief to which they are entitled. Prior to the quadrennial state legislative elections of 1967 and 1971, the District Court struck down due to malapportionment legislative redistricting plans enacted by the Mississippi Legislature, and substituted court-ordered plans

providing numerous multi-member districts pursuant to which the legislative elections were held. *Connor* v. *Johnson*, 256 F. Supp. 962 (S.D. Miss. 1966); 265 F. Supp. 492 (S.D. Miss. 1967); 330 F. Supp. 506 (S.D. Miss. 1971), *vacated and remanded sub nom. Connor* v. *Williams*, 404 U.S. 549 (1972).[1]

On January 24, 1972, this Court withheld final decision on the constitutionality of the District Court's 1971 plan as a permanent legislative reapportionment plan for Mississippi on the ground that the District Court's deliberations were incomplete and "it would be preferable to have before us a final judgment with respect to the entire State." *Connor* v. *Williams*, 404 U.S. 549, 551-52. The judgment of the District Court establishing temporary court-ordered districts for the 1971 election was vacated, except insofar as it applied

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[1] On plaintiffs' appeal from the District Court's 1971 judgment establishing court-ordered districts, 330 F. Supp. 506, this Court on June 3, 1971, granted interim relief pending appeal and ordered that:

> "The District Court is instructed, absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by [June 14, 1971]." *Connor* v. *Johnson*, 402 U.S. 690, 692 (1972).

In response, the District Court on June 16, 1971 repeated its earlier conclusion of May 18, 1971 that "with the time left available it is a matter of sheer impossibility to obtain dependable data, population figures, boundary locations, etc." to create single-member districts for Hinds County for the 1971 elections. *Connor* v. *Johnson*, 330 F. Supp. 521, 522 (S.D. Miss. 1971). On the basis of this finding by the District Court, this Court denied plaintiffs' subsequent application for further relief, 402 U.S. 928. (Yet four years later, between June 10, 1975 (the date of the Attorney General's objection to the 1975 legislative plan) and July 11, the District Court accomplished, during a period much closer to the 1975 elections, what it found was "impossible" to do in 1971—divide Hinds County into single-member districts—and more).

to the 1971 elections, and the case was remanded to the District Court "for further proceedings consistent with this opinion." *Id.* at 552. The Court noted that the District Court had retained jurisdiction of the question of the multi-member districts in Hinds, Harrison, and Jackson Counties and had indicated that it "expects to appoint a special master" as of January 1, 1972, "to take testimony and make findings" regarding the feasibility of single-member districts for Hinds, Harrison, and Jackson (330 F. Supp. at 519). This Court directed:

> "Such proceedings should go forward and be promptly concluded, for, as this Court has emphasized, 'when District Courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter.' *Connor* v. *Johnson,* 402 U.S. 690, 692,". *Id.* at 551.

On remand, no special master was appointed as directed, and no testimony was taken nor findings made on the feasibility of devising single-member legislative districts for those counties.

The Mississippi Legislature in 1973 and 1975 enacted legislative reapportionment plans which were almost identical to the 1971 court-ordered plan. Miss. Code Ann. §§ 51-1-1, 5-1-3 (1972) (1976 Cum. Supp.). Plaintiffs objected to the final 1975 legislative plan,[2]

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[2] Under the Legislature's House plan, 109 of 122 representatives (89%) were elected from 33 multi-member and floterial districts, and under the Senate plan 33 of 52 senators (63%) were elected from 14 multi-member and floterial districts. Further, the House plan was malapportioned by total deviations of 62.96% including floterial districts and 19.73% excluding floterial districts, and the Senate plan was malapportioned by total deviations of 20.29%

and at the hearing held on May 7, 1975, presented alternative single-member plans for the House and Senate.[3] Both of plaintiffs' alternative plans provide single-member districts statewide and are based on 1970 Census data, using Census enumeration districts[4] for the construction of legislative districts. The first plan (Exs. P-19, P-20), devised by Dr. David Valinsky of the City University of New York,[5] provides single-member legislative districts statewide with no district exceeding a variance of 3.09%. The House districts range from +3.09% to —2.30%, for a total deviation of only 5.39%. The Senate districts range from +1.66% to —1.73%, for a total deviation of only 3.39%. Dr. Valinsky testified that the center of each proposed district was randomly determined, and the districts were drawn without regard to race or the location of racial concentrations (Ex. P-17, Valinsky testimony, pp. 64-140). According to statistics presented by the Department of Justice, the Valinsky plan provides 7 districts with black voting age population majorities in the Senate and 23 districts with black voting age population majorities in the House.

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including floterial districts and 18.90% excluding floterial districts. See J.S., *Connor* v. *Waller*, 421 U.S. 656 (1975), pp. 9, 19-22.

[3] See J.S., *Connor* v. *Waller*, *supra*, pp. 22-24.

[4] Census enumeration districts are the smallest geographical units for which the Bureau of the Census publishes population statistics (except for city blocks in large urban areas). See *Sims* v. *Amos*, 336 F. Supp. 924, 936 (M.D. Ala. 1972), aff'd, 409 U.S. 942 (1972).

[5] Professor Valinsky was chairman of the Statistics Department of Bernard M. Baruch College of the City University of New York (Ex. P-18). He drew the Alabama legislative reapportionment plan ordered into effect by the District Court and affirmed by this Court in *Amos* v. *Sims*, 409 U.S. 942 (1972).

The second plan (Exs. P-33, P-34), drafted by Henry J. Kirksey, a cartographer who is one of the plaintiffs in the case,[6] provides House districts which range from +2.96% to −2.79%, for a total House deviation of only 5.75%, and Senate districts which range from +2.39% to −2.62%, for a total Senate deviation of only 5.01%. Mr. Kirksey testified that in drafting his plan he located concentrations of black population and drew the district boundaries in such a way as to avoid fragmenting or dispersing black population concentrations (Ex. P-25, Kirksey deposition). According to statistics presented by the Department of Justice, the Kirksey plan provides 7 districts with black voting age population majorities in the Senate and 26 districts with black voting age population majorities in the House.[7]

Against plaintiffs' claims of racial discrimination and malapportionment, the District Court on May 20, 1975, sustained the constitutionality of the Legislature's 1975 reapportionment plan, *Connor* v. *Waller*, 396 F. Supp. 1308 (S.D. Miss. 1975), and on June 5, 1975, this Court reversed, 421 U.S. 656 (1975), holding that the new laws "are not now and will not be effective as laws until and unless cleared pursuant to § 5" of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. This Court's opinion provided:

> "This reversal is, however, without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to

[6] Mr. Kirksey has testified in several Mississippi county redistricting cases (Ex. P-25).

[7] On June 11, 1975, the District Court allowed the intervention of the United States as plaintiff-intervenor. Subsequently, the United States also presented to the District Court alternative plans based both on Census enumeration districts and voting precincts.

> require the conduct of the 1975 elections pursuant to this Court's decisions in *Mahan* v. *Howell*, 410 U.S. 315 (1973), *Connor* v. *Williams*, 404 U.S. 549 (1972) and *Chapman* v. *Meier*, 420 U.S. 1 (1975)."

On June 10, 1975, the United States Attorney General objected under Section 5 of the Voting Rights Act of 1965 to the Legislature's reapportionment plan, but on July 11, 1975, the District Court nevertheless ordered it into effect as a temporary plan for the 1975 legislative elections, except that the District Court subdivided one multi-member Senate district (Hinds County) and five multi-member and floterial House districts into single-member districts. Petition, *Connor* v. *Coleman*, No. 75-1184, Appendix F.

Prior to the enactment of the Voting Rights Act of 1965, because of the white primary, discrimination in voter registration, the poll tax, and other discriminatory practices,[8] no black had been elected to the Mississippi Legislature since Reconstruction. According to the 1970 Census, Mississippi is 37% black. In the 1967 general election, one black representative was elected and subsequently reelected to the 122-member Mississippi House, and in the 1975 general election—as a result of the creation of single-member House districts in Hinds County—three additional black representatives were elected. The 52-member Mississippi Senate remains all-white.

Despite its assurances that a permanent court-ordered plan would be issued by February 1, 1976, the District Court on January 29, 1976 stayed all further proceedings, and on plaintiffs' petition for a writ of mandamus, this Court instructed the District Court

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[8] See J.S., *Connor* v. *Waller, supra*, pp. 14-19.

that there was no justification for further delay and that the case should be brought to trial forthwith to the end of entering a final judgment and ordering "any necessary special elections to be held to coincide with the November 1976 Presidential and congressional elections, or in any event at the earliest practicable date thereafter." *Connor* v. *Coleman,* No. 75-1184 (May 19, 1976) (slip op. at 5). A final hearing was held June 15, 1976.

B. The District Court's Plan

On August 24 and September 8, 1976, the District Court promulgated court-ordered plans for the Mississippi Senate and House of Representatives, respectively, providing single-member districts statewide (App. "D" and "E", Application to Vacate Stay . . ., No. A-421). In response to objections and motions to alter and amend filed by the private plaintiffs and the Department of Justice, certain districts of the court's plan were altered by orders of November 12 and December 21.

For its Senate and House plans, the District Court established three criteria. First, following *Connor* v. *Williams, supra, Mahan* v. *Howell, supra,* and *Chapman* v. *Meier, supra,* the District Court determined to draw plans for the Senate and House which provided single-member districts statewide. Opinion of August 24, 1976. (*Id.* App. "E".) Second, because of Mississippi's tradition of using county boundaries to delineate legislative districts, and because of permanent registration, the District Court determined to base its legislative districts on political subdivisions, counties, and where necessary, supervisors' districts (beats), and voting precincts. Any other plan, the District Court believed, would require a realignment of voting

precincts and a reregistration of voters. *Id.*, p. 6. Third, the District Court aimed at providing not *de minimis* variance from population equality, but stated that "the population variances are to be as near *de minimis* as possible" and recognized that use of the political subdivision boundaries "has necessitated greater variances in population percentages in some instances than ordinarily would have been preferred." *Id.*, p. 9a.

Although the District Court in an unreported opinion rendered June 15, 1976, stated: "The plan to be formulated by the Court will be based on the official returns of the 1970 Census" (Opinion of June 15, 1976, p. 10), the legislative districts ordered into effect were devised not from 1970 Census population statistics, but rather from the votes received by the Democratic candidates for Governor in the August 5, 1976 Democratic primary election. The court and the special master who prepared the Court's plans stated that reliance on these data was necessary because the plans were based not on Census districts, but rather on new county supervisors' districts and voting precincts:

> "Election data was [sic] used to help arrive at the population of the voting precincts, there being no Census figures available for these smallest of political entities, but in every case these election data were used in connection with known population data for 1970 for larger political subdivisions. * * * Each precinct's percentage of the total vote cast either in the county or in the applicable beat was applied to the population of the county or applicable beat (when the latter was known) to arrive at a calculated estimate of the population of each precinct." Analysis by Special Master of Plain-

tiff's Objections, filed December 20, 1976 (attached in Appendix).

A. Senate Plan.

As a result of this bizarre method of calculating population statistics for legislative reapportionment, there are conflicts between the population statistics provided by the court and those calculated by the plaintiffs and plaintiff-intervenor using 1970 Census districts. However, based on the court's own figures, the court-ordered Senate districts are excessively malapportioned. According to the District Court's figures, District 6 has a variance of +8.2%, and District 38 has a variance of —8.3% (*Id.*, App. "E" p. 19), for a total deviation in the Senate plan of 16.5%. Fifteen of the court's 52 Senate districts have a variance of over 5%, plus or minus, and four have a variance of 8% or over, plus or minus.

Further, the District Court's Senate plan unnecessarily dilutes and fragments black voting strength. Instead of starting on a fresh slate, the District Court in general simply subdivided the old multi-member Senate districts in its 1971 court-ordered plan, many of which combined majority black counties with more populous majority white counties creating district-wide white majorities,[9] into single-member Senate districts. Thus, Claiborne County, which is 74% black and which has numerous countywide black elected officials, was combined in District 37 with Beat (Supervisors' District) 3 of Copiah County and with Lincoln County, which is 69% white, to create a single-member district

[9] See J.S., *Connor* v. *Waller, supra,* pp. 8-14.

which is 55.02% white.[10] Similar dilution is present in Districts 1, 2, 11, 22, 23, 38, and 39.[11]

Further, plaintiffs objected to using the new supervisors' districts for Senate districts in Hinds County (Senate Districts 31 through 35). Under the new Hinds County redistricting plan, the heavy black population concentration in the central city of Jackson containing 69% of the county's black population is split up and divided among all five supervisors' districts. Although two of the new districts have black population majorities, Census statistics indicate that in a county which is 39 percent black all five districts are majority white in voting age population, and with a strict pattern of racial bloc voting, black voters are deprived of the opportunity to elect public officials of their choice in any of the five districts.[12]

The District Court rejected the Valinsky and Kirksey Senate plans because of its desire to order a plan which maintained the integrity of county, supervisors' district (beat) and precinct boundaries (Opinion of August 24, 1976, App. "E", p. 10). However, plaintiffs presented to the District Court an alternative Senate plan which adheres more closely to county boundaries, which provides greater equality of population among

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[10] Plaintiffs' Motion to Alter and Amend Judgment, filed Sept. 20, 1976, App. p. 1a, ff.

[11] *Id.*, p. 1a, ff.

[12] The facts of the Hinds County redistricting case are described in *Kirksey* v. *Board of Supervisors of Hinds County*, 402 F. Supp. 658 (S.D. Miss. 1975), *aff'd*, 528 F.2d 536 (5th Cir. 1976), pending on rehearing en banc. Although the District Court and Court of Appeals sustained the constitutionality of the county redistricting, the case is pending decision after oral argument on rehearing en banc.

the districts, and which avoids the dilution of black voting strength present in the District Court's plan. The Modified Henderson Senate County Boundary Plan,[13] filed with the District Court October 8, 1976, strictly adheres to the criteria adopted by the District Court and provides 52 single-member Senate districts based exclusively on county, supervisors' districts, and voting precinct boundaries. The population statistics are based not on voting statistics, but on 1970 Census enumeration districts.[14] The Modified Henderson Plan has a total deviation of only 13.66% (as opposed to 16.5% in the District Court's plan), and only 9 of the 52 districts (as opposed to 15 of the 52 districts in the District Court's plan) have variances exceeding 5%, plus or minus. The county lines of 67 counties are preserved intact without any fracturing, and only 15 counties (as opposed to 19 counties in the District Court's plan) are split up to create single-member districts which cross county lines.

Further, in the Modified Henderson Plan dilution of black voting strength is minimized. While the District Court's plan splits up two adjoining majority black counties, Jefferson and Claiborne, and places Claiborne in a majority white district (and Jefferson in Senate District 38 with a variance of —8.3%), the Modified Henderson Plan places Claiborne and Jeffer-

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[13] Plaintiffs' Supplement to Motion to Alter or Amend Judgment, filed Oct. 8, 1976, App. p. 15a, ff.

[14] Instead of using voting statistics, as the District Court did, plaintiffs estimated the population of voting precincts where necessary by adding up the population of each 1970 Census enumeration district (ED) within each precinct, and in instances in which precinct lines split the ED, estimating the proporton of the ED population on each side of the precinct line.

son together in a single Senate district, which is majority black in population, with a variance from population equality of only 3.51%.

Although the Modified Henderson Plan adheres more closely to the criteria established by the District Court than the District Court's own plan, crosses fewer county lines, is based on 1970 Census data, provides greater equality of population among the districts, and contains less dilution of black voting strength, no reason was ever given by the District Court for rejecting it.

B. House Plan.

Although several districts in the District Court's House plan contain variances from population equality which are less than ideal, the House plan generally succeeds in equalizing the population among the districts within the criteria established by the District Court, i.e., defining legislative districts by county boundaries, supervisors' districts, and voting precincts. Moreover, the District Court's House plan goes a long way toward alleviating the dilution of black voting strength present in the 1971 and 1975 multi-member court-ordered House plans.

Plaintiffs' and plaintiff-intervenor's objections to the District Court's House plan focused primarily on objections to the delineation of particular districts for malapportionment and dilution of black voting strength. Further, both of these parties presented to the District Court alternative plans which, within the structure of the single-member districts already established and following the criteria promulgated by the District Court, would have improved upon the districts ordered into effect by the District Court.

(1) Issaquena and Washington Counties (House Districts 32, 33, 34, and 35). Although the District Court's statistics, calculated from the election returns for the 1975 Democratic primary for Governor, indicate maximum variances of —4.2% for House District 33 and +7.2% for House District 34, plaintiffs' statistics based on 1970 Census enumeration districts indicate that the true population variances are —7.2% for District 33 and +11.0% for District 34, for a total deviation of 18.2%.[15] Further, through over-elongated and uncompact districts, the District Court plan disperses the urban black population concentration in north and west Greenville among several districts, thus depriving the 38,460 Washington County blacks, in a county which is 54% black, of a clear voting majority in any of the four legislative districts.

Plaintiffs presented to the District Court two alternative plans[16] based on 1970 Census enumeration districts which would have reduced the excessive malapportionment to total deviations of 10.97% (Alternative 1) and 5.92% (Alternative 2) without fractionating the black population concentrations in north and west Greenville.

(2) Warren and Yazoo Counties (House Districts 47, 53, 54, 55, and 56). Warren County, which is 41% black, contains 18,355 black people, more than enough for the 18,171 population required for a single-member House district. The three Warren County districts in

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[15] Appendix "A" to Motion to Alter or Amend Judgment, filed Nov. 29, 1976.

[16] Plaintiffs' Supplement to Motion to Alter or Amend Judgment, filed Oct. 8, 1976, App. p. 15a, ff.

the District Court's plan [17] (Districts 53, 54, and 55) all slice into the heavy black population concentration in north Vicksburg and north of Vicksburg and fragment it among all three districts,[18] thus depriving Warren County blacks of a majority in any district.[19]

Plaintiffs presented to the District Court an alternative plan which, although providing slightly higher population variances, nevertheless did not fragment black voting strength in Warren County, and provided blacks with one 59% majority black district.[20]

(3) Adams County (House Districts 88 and 89). Adams County contains 17,865 black persons, almost enough for a 18,171-person single-member district. However, the two Adams County districts provided by the District Court's plan so fragment the heavy black concentration in north Natchez and the northwest portion of Adams County as to deprive Adams County blacks of a clear voting majority in either of the two districts.[21]

The Department of Justice presented to the District Court an alternative plan for Adams County which

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[17] Because of excessive population variances, the District Court was required to revise its Warren County districts twice. The final districts are contained in the District Court's Order Amending Previous Judgment, filed Dec. 21, 1976, App. p. 78a, ff.

[18] Maps showing the voting precincts of Warren County are attached to Plaintiffs' Motion to Alter or Amend Judgment, filed Sept. 20, 1976, Exhibits A and B. The precinct statistics, by race, are attached to plaintiffs' Motion to Alter or Amend Judgment, filed Nov. 29, 1976, App. C.

[19] District 53 is 42.5% black, District 54 is 41.8% black, and District 5 is 43.7% black. Order Amending Previous Judgment, filed December 21, 1976, App. p. 80a, ff.

[20] Plaintiffs' Supplement to Motion to Alter or Amend Judgment, App. p. 15a, ff.

[21] Objections of the United States, filed Oct. 22, 1976, p. 7.

would have reduced the dilution of black voting strength and which resulted in one district in which blacks constituted 59.5% of the voting age population while maintaining a deviation of less than 8%.[22]

Although these objections were all timely made by the private plaintiffs and the United States as plaintiff-intervenor, the District Court failed to hold a hearing on these objections and rejected them without articulating any reasons why the proposed alternatives should not be accepted.

Although appellants do not challenge the District Court's House plan in its entirety—because it does in substantial measure eliminate the discrimination present in the prior multi-member districts, and because appellants agree with the District Court that this litigation must come to an end—appellants do challenge the above-described court-ordered House districts because those districts can be altered and redrawn within the basic structure set up by the District Court without any disruption to any other House district.

C. Attorneys' Fees

Prior to the final judgment, plaintiffs moved the District Court for an award of attorneys' fees based on the 1975 amendments to the Voting Rights Act of 1965, 42 U.S.C. § 1973*l*(e), 89 Stat. 404.[23] Although the District Court granted plaintiffs their taxable court costs, the court denied plaintiffs any attorneys' fees, stating only:

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[22] *Id.*, p. 7, Exhibit D.

[23] Plaintiffs' Motion for an Award of Attorney's Fees, filed June 15, 1976.

> "The Court has heretofore found that the Mississippi Legislature made a good faith effort to reapportion itself in 1973 and 1975. The 1975 effort was upheld by this Court but failed on account of the disapproval of the Attorney General of the United States. We are thus of the opinion that no attorneys' fees are allowable in this case." Opinion of November 12, 1976.

No mention was made nor notice taken by the District Court of the statutory authorization for the award of attorneys' fees provided by the 1975 amendment to the Voting Rights Act, nor of the recently enacted Civil Rights Attorneys' Fees Awards Act of 1976, P.L. 94-559, 90 Stat. 2641 (October 19, 1976).

THE QUESTIONS ARE SUBSTANTIAL

This Court in *Chapman* v. *Meier,* 420 U.S. 1 (1975), established the standards to be followed by District Courts in formulating court-ordered legislative reapportionment plans. In that case this Court held: "A court-ordered plan . . . must be held to higher standards than a State's own plan" (420 U.S. at 26). On the qustion of malapportionment, this Court held:

> "With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features * * * [A] court-ordered reapportionment plan of a state legislature . . . must ordinarily achieve the goal of population equality with little more than de minimis variation. Where important and significant state considerations rationally mandate departure from these standards, it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted." *Id.* at 26-27 (footnote omitted).

While the District Court articulated its rationale for preferring legislative districts based on existing political subdivisions, it failed entirely to justify its preference for its own Senate plan over plaintiffs' Modified Henderson Plan which adhered to the same criteria, yet provided greater equality of population among the districts, broke fewer county lines, was based on 1970 Census data, and eliminated the dilution of black voting strength contained in the District Court's Senate districts.

In the cases involving legislatively-enacted reapportionment plans, this Court has reversed District Court decisions sustaining legislative plans providing less equality of population among districts in the face of plans submitted by the plaintiffs which have similarly respected political subdivision lines but which provided greater equality of population.

In two cases, *Swann* v. *Adams,* 385 U.S. 440 (1967), and *Kilgarlin* v. *Hill,* 386 U.S. 120 (1967), this Court disapproved court-approved legislative plans which contained population variances greater than plans submitted by plaintiffs. In *Swann,* this Court, in reversing, noted that, "[t]he appellants themselves placed before the court their own plan which revealed much smaller variations between the districts than did the plan approved by the District Court," 385 U.S. at 445, and went on to hold that the plan could not be approved where there was no showing "that the difference [between the court-approved plan and equality of population] . . . is unavoidable or justified upon any legally acceptable ground," *id.,* 385 U.S. at 446, *quoting Maryland Citizens Committee for Fair Congressional Redistricting, Inc.* v. *Tawes,* 253 F. Supp. 731, 733. In *Kilgarlin,* following the opinion in *Swann* v. *Adams,* this

Court summarily reversed a district court-approved legislative reapportionment plan. Observing that "at least two other plans [were] presented to the court, which respected county lines but which produced substantially smaller deviations" than did the court-approved plan, this Court held that: "[u]nder that case [*Swann*] it is quite clear that unless satisfactorily justified by the court or by the evidence of record, population variances of the size and significance evident here [in the court-approved plan] are sufficient to invalidate an apportionment plan," 386 U.S. at 122.

If a court-ordered plan is to be held to higher standards than a State's own plan, then any plan ordered into effect by a District Court must be strictly scrutinized to insure that dilution or fragmentation of black voting strength is scrupulously avoided. This is particularly true here, where because of past discrimination in voting and disfranchisement through discriminatory multi-member districts, the District Court was under an affirmative duty "to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana* v. *United States,* 380 U.S. 145, 154 (1965).

Accordingly, there was no good reason, and the District Court failed to state any, why the District Court should have rejected, without even a hearing to provide an opportunity to present proof, the objections presented by the private plaintiffs and the Department of Justice to certain House districts included in the court-ordered House plan, or why the District Court should have rejected the Modified Henderson Senate Plan. This Court and the lower appellate courts have made clear that black voting strength is invidiously mini-

mized and cancelled out in single-member districts when a heavy black population concentration is fragmented and dispersed, or combined with a heavier white population concentration to create a districtwide white majority. *Taylor* v. *McKeithen,* 407 U.S. 191 (1972); *Robinson* v. *Commissioners Court, Anderson County,* 505 F.2d 674 (5th Cir. 1974); *Moore* v. *Leflore County Bd. of Election Comm'rs,* 502 F.2d 621, 622-24 (5th Cir. 1974).

The question is not whether the court-ordered districts are unconstitutional under constitutional standards applicable to legislatively-enacted plans, *cf. White* v. *Regester,* 412 U.S. 755 (1973), but whether in promulgating a court-ordered redistricting, the District Court abused its discretion in refusing to accept or grant a hearing on the objections of plaintiffs and plaintiff-intervenor that the Court's own districts effectuated an invidious dilution of black voting strength with the effect of depriving substantial black population concentrations, sufficiently large and compact for a majority black legislative district, of the opportunity to elect legislators of their choice.

The District Court also erred in denying plaintiffs an award of attorneys' fees. Title IV, § 402, of the 1975 amendments to the Voting Rights Act of 1965, 42 U.S.C. § 1973*l*(e), provides:

> "In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

Since the District Court awarded plaintiffs their taxable costs of court, and since plaintiffs succeeded in

persuading the District Court to order single-member districts statewide, there can be no doubt that plaintiffs are the prevailing party.

Since Congress has provided statutory authorization for an attorney's fee award in cases such as this, it was error for the District Court to deny the fee award on a finding that the Mississippi Legislature, not the defendants, had acted in good faith. When attorneys' fee awards are provided by statute in civil rights cases, regardless of the good faith or bad faith of the defendants, plaintiffs who succeed in obtaining injunctive relief "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman* v. *Piggie Park Enterprises,* 390 U.S. 400, 402 (1968) (Title II of the Civil Rights Act of 1964). Congress in enacting the 1975 attorneys' fee provision as an amendment to the Voting Rights Act made clear that the same standard should apply under the new statute:

> "It is intended that the standards for awarding fees under Sections 402 and 403 be generally the same as under the fee provisions of the 1964 Civil Rights Act. A party seeking to enforce the rights protected by the Constitutional clause or statute under which fees are authorized by these sections, if successful, 'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.' *Newman* v. *Piggie Park Enterprises, Inc.,* 390 U.S. 400, 402 (1968)." S. Rep. No. 94-295, 94th Cong, 1st Sess 40-41 (1975) (footnote omitted).

This section was originally introduced in the House of Representatives as Section 402 of H.R. 6219. The House committee report specifically approved the same standard:

> "The Committee further notes its approval of the prevailing case law which holds that where a statute authorizes it, a successful plaintiff 'should ordinarily recover an attorney's fee unless special circumstances would render such an aware [sic] unjust.' *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968) (per curiam)." H.R. Rep. No. 94-196, 94th Cong., 1st Sess. 34 (1975).

See also, 121 Cong. Rec. H 4720 (daily ed. June 2, 1975) (remarks of Rep. Edwards); 121 Cong. Rec. H 4734-35 (daily ed. June 2, 1975 (remarks of Rep. Drinan).

In applying this new statute, this Court and the lower appellate courts have indicated that the new law should be applied in pending cases to award prevailing parties an attorneys' fee for services rendered prior to the effective date of the new statute. *Wallace* v. *House,* No. 75-914 (U.S. April 26, 1976); *Panior* v. *Iberville Parish School Board,* No. 74-3329 (5th Cir. Dec. 13, 1976); *Lytle* v. *Commissioner of Election of Union County,* 541 F.2d 421, 426-27 (4th Cir. 1976); *Wallace* v. *House,* 538 F.2d 1138, 1146-48 (5th Cir. 1976); *Ferguson* v. *Winn Parish Police Jury,* 528 F.2d 592, 599 n.13 (5th Cir. 1976); cf. *Bradley* v. *School Board of City of Richmond,* 416 U.S. 696 (1974).[24]

CONCLUSION

Because this appeal involves important questions regarding the criteria a District Court should follow in

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[24] Since this action was brought pursuant to 42 U.S.C. § 1938, the newly enacted Civil Rights Attorney's Fees Awards Act of 1976, P.L. 94-559, 90 Stat. 2641 (October 19, 1976), provides an alternative basis for an attorney's fee award in this case. See H.R. Rep. No. 94-1558, 94th Cong., 2d Sess. (1976); S. Rep. No. 94-1011, 94th Cong., 2d Sess. (1976); cf. *Stanton* v. *Bond,* No. 75-1413 (Nov. 30, 1976).

court-ordered legislative reapportionment plans, and awards of attorneys fees in voting rights cases in which fee awards are authorized by statute, this Court should note probable jurisdiction. Because of the pendency of another appeal in this same case, *Connor* v. *Finch,* No. 76-777, probable jurisdiction noted December 8, 1976, this Court should consolidate the two appeals for simultaneous oral argument on February 28, 1977. For the reasons stated above, this Court should vacate the District Court's Senate plan and those districts of the District Court's House plan objected to above, and remand to the District Court with instructions to adopt and order into effect for the 1979 legislative elections and for special legislative elections prior to 1979 the Modified Henderson Senate County Boundary Plan and the alternative House districts proposed by plaintiffs and plaintiff-intervenor.

Respectfully submitted,

FRANK R. PARKER
THOMAS J. GINGER
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

ROBERT A. MURPHY
ELIZABETH R. RINDSKOPF
WILLIAM E. CALDWELL
Lawyers' Committee for
Civil Rights Under Law
Suite 520 Woodward Building
733 Fifteenth Street, N.W.
Washington, D.C. 20005

Attorneys for Appellants

APPENDIX

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

PEGGY J. CONNOR, ET AL., *Plaintiffs,*

v.

CLIFF FINCH, ET AL., *Defendants,*

and

UNITED STATES OF AMERICA, *Plaintiff-Intervenor,*

(FILED SEPTEMBER 20, 1976)

Motion to Alter and Amend Judgment and Plaintiffs' Objections to 1976 Court-Ordered Legislative Reapportionment Plan.

Plaintiffs, by their attorneys, move the Court to alter and amend its Judgment of September 8, 1976, to conform its court-ordered legislative reapportionment plan to constitutional and equitable requirements, and file herewith their objections to the Senate and House redistricting plans.

A. SENATE PLAN.

1. Upon information and belief, in estimating precinct population for the Senate plan, the Court used not 1970 Census data or even current voter registration data, but estimated precinct population using the votes received by the Democratic candidates for Governor in the August 5, 1975 Democratic primary election for each precinct used in the plan. This is a totally unreliable method of calculating or estimating population statistics. The method of estimation results in extreme variances from population

equality and apparently excludes persons who did not vote in that primary and Republican voters from the population statistics.

2. Plaintiffs object to the use of supervisors' districts (beats) in legislative redistricting. Throughout the state the boundaries of supervisors districts fractionate, dilute, and minimize and cancel out black voting strength, and are uncompact. Further, in most cases supervisors districts (those drawn by Comprehensive Planners, Inc.) are drawn to attempt to equalize county-maintained road mileage and land area, factors which have no place in legislative reapportionment.

Further, throughout Mississippi supervisors' district (beat) lines are based not on natural and physical boundaries such as rivers, streams, highways, county roads and the like, but are defined by land section lines which are invisible to the voter and fail to provide voters a guide regarding which legislative district they are in (see *Connor* v. *Johnson,* 330 F. Supp. 506, 518).

3. The Senate plan fails to provide substantial equality of population among the districts, in violation of the Equal Protection Clause of the Fourteenth Amendment. According to the statistics provided in the Court plan, the Senate plan has a total deviation of 16.7 percent, which is an unconstitutionally and inequitably high deviation for a court-ordered plan. Moreover, our analysis of the Senate plan indicates that the total deviation is in fact much higher. Our analysis indicates an error in the population figures for Districts 28 and 29. According to our analysis, the Court erroneously included all of Census enumeration districts 7, 27, and 28 in Holmes County Beats 2 and 3 (District 28), when in fact a substantial portion of those ED's are outside of Beats 2 and 3 and lie within Beats 1 and 4 (District 29). Copies of the Holmes County Census map and redistricting plan maps are attached. Further, a small portion of ED 25 which is within Beat 3 was not included

in the calculations for Beat 3. Accordingly, our calculations, based on Census enumeration districts and estimating for split ED's indicate the following population for Districts 28 and 29:

District	Court's Total	Plaintiffs' Total (Based on 1970 Census)	Correct Variance
28	45,612	44,943	+5.42%
29	46,223	46,892	+9.99%

These corrected population statistics show a total deviation in the Senate plan between the maximum minus variance, District 38 (−8.33%), and the maximum plus variance, District 29 (+9.99%), of 18.32%.

There are in the record other alternative plans which would provide much greater equality of population among the districts even preserving county boundaries. The Henderson County Boundary Plan (Ex. P-8, Exhibit 3), attached hereto, still adheres to county boundary lines, yet contains a total deviation of only 10.51 percent. (The Henderson Senate plan is incomplete because it contains 17 multi-member districts. But those multi-member districts can be subdivided into single-member districts along beat and precinct lines with no greater deviation from population equality, just as the Court has done with its Senate plan.)

4. The Senate plan in a number of districts dilutes black voting strength:

(a) The single-member districts in the Senate plan are based in substantial part and are carved out of the 1971 and 1975 court-ordered multi-member district plan which diluted black voting strength in a number of districts by combining majority black counties with majority white counties for districtwide white majorities, and by providing for countywide, at-large voting.

(b) Districts 31 through 35 are based on the Hinds County supervisors' districts which split up and divide the county's heaviest concentration of black population located in Jackson (69 percent of the total county black population) among all five districts. Although two districts have slight black population majorities, all five districts are majority white in voting age population and registered voters. These figures, taken from the record in *Kirksey* v. *Board of Supervisors of Hinds County, Mississippi,* No. 75-2212, U.S. Court of Appeals for the Fifth Circuit, are attached.

Plaintiffs move the Court to adopt plaintiffs' Census Tract plan (Ex. P-14) as an alternative to this discriminatory supervisors' district arrangement.

(c) In several instances, majority black counties, or majority black parts of majority black counties, are combined with majority white counties, or parts of majority white counties, resulting in districts which are majority white districtwide. For example, Claiborne County, which is 74 percent black, is combined with Beat 3 of Copiah County and Lincoln County, which is 69 percent white, to make up a white majority district which dilutes black voting strength in Claiborne County:

District 37	Total Pop.	White	Black
Claiborne	10,086	2,536	7,522
Copiah, Beat 3 [1]	4,705	1,879	2,826
Lincoln	26,198	18,138	8,035
Totals	40,989	22,553 (55.02%)	18,383 (44.85%)

Similarly, 75 percent Black Jefferson County is combined with four supervisors' districts in white majority Adams

[1] Beat 3 population estimated from 1970 Census enumeration districts. Other figures are 1970 Census.

County (District 38) to dilute black voting strength in Jefferson.

Such dilution is not necessary. An alternative would be to combine Claiborne, Jefferson, and Copiah in a single-member district with a variance of only +3.51 percent which would not dilute black voting strength and which would produce a district-wide black majority:

	Total	White	Black
Claiborne	10,086	2,536	7,522
Jefferson	9,295	2,296	6,996
Copiah	24,749	12,298	12,437
Totals	44,130	17,130 (38.82%)	26,955 (61.08%)

Plaintiffs move the Court to accept this alternative, and to adjust the adjoining district to accommodate it.

Similar dilution may be found in Districts 1, 2, 11, 22, 23, and 39.

5. Although the statistics set out by the Court in its plan indicate that 14 districts are majority black in population, there are errors in the Court's tabulations and these figures do not accurately reflect present black voting strength in those districts. For example, the statistics given for Districts 32 (Hinds County Beat 2) and 33 (Hinds County Beat 3), 54.3 percent black and 51.2 percent black, respectively, are in error. The record in the *Kirksey* case indicates that present Beat 2 is 53.4 percent black and present Beat 3 is 27.7 percent black, *Kirksey* v. *Board of Supervisors of Hinds County*, 402 F. Supp. 658, 668 (S.D. Miss. 1975), aff'd, 528 F.2d 536 (5th Cir. 1976), pending on rehearing en banc.

A more reliable measure of voting strength in these districts is the Mississippi State University 1975 projections of voting age population by race (Ex. P-13). These figures

(applying the countywide proportions to parts of counties) show that at best there are only six districts with black 1975 voting age population majorities, none of them above 56 percent:

District	1970 Black Pop. Percent [2]	1975 Black VAP Percent [3]
12	57.2%	45%
13	63.9%	56%
14	59.6%	49.5%
15	64.4%	55%
16	54.7%	52%
17	55.5%	48%
18	57.9%	49%
19	51.9%	42%
28	62.0%	52%
29	60.8%	52%
32*	53.4%	48.0%
35*	54.0%	48.6%
38	55.6%	51%
39	51.3%	44%

[2] 1970 Census data and estimates for beats and precincts using Census enumeration districts and Census statistics.

[3] Estimates based on county ratios contained in Mississippi State University study, Ex. P-13, except where indicated.

* 1970 black population and 1970 black voting age population taken from record in *Kirksey* case, supra.

B. HOUSE PLAN.

1. Objections 1 and 2 set out in the objections to the Senate plan are reiterated here.

2. The House plan fails to provide substantial equality of population among the districts, in violation of the Equal Protection Clause of the Fourteenth Amendment. According to the statistics provided in the Court plan, the House plan has a total deviation of 18.5 percent. However, our analysis of the House plan indicates that the total deviation is in fact much higher.

Our analysis indicates that there are errors in the population calculations for Districts 53, 54, 55, and 56. District 53 is composed of only six precincts in the rural, sparsely populated southern portion of Warren County. Our analysis, based on estimates of precinct population from 1970 Census data, indicates that District 53 contains only an estimated 9,880 persons, for a variance of −45.63 percent. Census maps (which are attached) show that these six precincts include in whole or in part ED's 44 (part), 45 (part), 46 (part) (we also include 46B), 47, 48, and 49. Even if all of these ED's with no splits were included within District 53, the total population of the district, according to 1970 Census data, would equal only 10,699 persons.

District 54, on the other hand, is composed of seven precincts, all but one (Jonestown) entirely within the City of Vicksburg (pop. 25,478), the most heavily populated portion of Warren County. Our analysis indicates that according to 1970 Census data (estimating for split ED's), District 54 contains a total of 26,031 persons, for a variance of +43.25 percent.

These corrected population statistics show a total deviation in the House plan between the maximum minus variance, District 53 (−45.63%), and the maximum plus variance, District 54 (+43.25%), of 88.88 percent. Our analysis further shows that 12 districts have a variance of more

than 10 percent, plus and minus. These are: Districts 54 (+43.26%), 45 (+12.0%), 60 (+12.0%), 34 (+10.0%), 22 (+10.4%), 54 (−45.63%), 55 (−20.96%), 56 (−16.3%), 24 (−15.4%), 16 (−13.6%), 23 (−10.8%) and 85 (−10.2%).

3. For districts 118, 119, 120, 121, and 122 (Jackson County) there are no population statistics available. The District Court order approving the Jackson County redistricting makes no findings of fact with regard to the population for each of the new supervisors' district (beats) within Jackson County. In its September 8 order, the Court recognized that no population statistics for Jackson County beats were available when it simply divided the total county population five ways to arrive at the population for each beat, but there is nothing in the record nor in the court order in the Jackson County redistricting case to justify this apportionment of population.

4. Throughout the House plan, voting precincts are used to define districts. However, many counties in which precincts are used, such as Holmes, Covington, Alcorn, and Tallahatchie, have no precinct boundaries at all. Hence, it is impossible geographically to define the boundaries of the legislative districts established by the Court in those counties.

5. The various portions of District 99 (Pike County, Beats 2, 3, and 4) are not contiguous. Beats 1 and 5 cut through the City of McComb to separate Beat 2 from Beats 3 and 4. We suggest that this can be cured by reconstituting District 98 to include Amite County, Beats 4 and 5, and Pike County, Beats 4 and 5, and by reconstituting District 99 to include Pike County, Beats 1, 2, and 3.

WHEREFORE, we move the Court as follows:

1. Order a hearing on plaintiffs' objections to the court-ordered Senate and House plans.

2. Order those necessary changes in the Senate and House plans which can be made prior to the upcoming special elections which can be made with a minimum of confusion and alteration of the court-ordered plans.

3. Order the August 24 Senate plan and September 8 House plan into effect as interim plans for the upcoming special elections to be held this year, with any changes which can be made with convenience prior to those special elections.

4. Order such other substantive changes as may be necessary to conform the Senate and House plans to constitutional requirements to take effect after the special elections are held and to take effect for the regular 1979 legislative elections.

In any event, the special legislative elections previously proposed by this Court and ordered by the United States Supreme Court in its mandate of May 19, 1976 should be permitted to go forward on the basis of the single-member districts ordered by the Court, with such changes as can be made prior to the election, in those districts in which special elections are required to cure the dilution of black voting strength present in the 1975 temporary plan and to remedy extreme malapportionment in that plan, and to make necessary adjustments in representation caused by the promulgation of single-member districts. These single-member districts, particularly in the House plan, go far toward remedying the dilution of black voting strength present in the prior plan. However, because of residual malapportionment, racial dilution, and districting problems which remain in the 1976 court-ordered plan, plaintiffs move the Court to make additional alterations in its plan or to consider alternative plans proposed by plaintiffs and plaintiff-intervenor as permanent plans for the 1979 legislative elections.

Respectfuly submitted,

/s/ Frank R. Parker
FRANK R. PARKER
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

EXHIBITS TO MOTION

EXHIBIT A. Holmes County Census map.

EXHIBIT B. Map showing Holmes County redistricting plan.

EXHIBIT C. Henderson County Boundary Senate plan.

EXHIBIT D. Hinds County beat population and voting age population figures.

EXHIBIT E. Warren County Census map.

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

Exhibit C

HENDERSON COUNTY BOUNDARY SENATE PLAN (Henderson Deposition, 11/1/74, Ex. 3)

Based on 1970 Census Data

Total Deviation: 10.51 percent

Senate District	Counties	No. of Seats	Total Population	Variance
1	ALCORN TISHOMINGO	1	42,119	—1.20%
2	BENTON TIPPAH UNION	1	42,453	—0.41%
3	MARSHALL TATE	1	42,571	—0.14%
4	COAHOMA DESOTO TUNICA	2	88,186	3.42%
5	PANOLA QUITMAN	1	42,717	0.20%
6	LAFAYETTE PONTOTOC	1	41,544	—2.55%
7	ITAWAMBA LEE PRENTISS	2	83,104	—2.53%
8	BOLIVAR SUNFLOWER	2	86,447	1.38%
9	HOLMES LEFLORE TALLAHATCHIE	2	84,569	—0.81%
10	CARROLL GRENADA YALOBUSHA	1	41,166	—3.43%
11	CALHOUN CHICKASAW WEBSTER	1	41,475	—2.71%

12	CLAY MONROE OKTIBBEHA	2	81,633	—4.25%
13	ATTALA CHOCTAW MONTGOMERY	1	40,928	—3.99%
14	LOWNDES NOXUBEE WINSTON	2	82,394	—3.36%
15	ISSAQUENA SHARKEY WASHINGTON	2	82,252	—3.53%
16	HUMPHREYS YAZOO	1	41,904	—1.70%
17	WARREN	1	44,981	5.51%
18	HINDS	5	214,964	0.84%
19	MADISON RANKIN SMITH	2	87,231	2.30%
20	KEMPER LEAKE NESHOBA NEWTON SCOTT	2	88,472.	3.76%
21	CLARKE LAUDERDALE	2	82,136	—3.66%
22	CLAIBORNE COPIAH JEFFERSON	1	44,130	3.51%
23	ADAMS FRANKLIN	1	45,304	6.26%
24	AMITE LINCOLN PIKE WILKINSON	2	82,811	—2.87%

25	LAWRENCE SIMPSON WALTHALL	1	43,584	2.23%
26	COVINGTON JEFFERSON DAVIS JONES	2	83,295	—2.30%
27	GREENE JASPER WAYNE	1	41,186	—3.39%
28	HANCOCK LAMAR MARION PEARL RIVER	2	83,263	—2.34%
29	FORREST GEORGE PERRY STONE	2	87,474	2.59%
30	HARRISON	3	134,582	5.22%
31	JACKSON	2	87,975	3.18%

Exhibit D

1. Population of Pre-1969 Districts by Race
(402 F. Supp. at 667)

District	White Pop.	Percent	Black Pop.	Percent
1	54,292	53.69	46,674	46.15
2	1,705	23.74	5,477	76.26
3	1,705	31.89	3,631	67.92
4	37,875	62.64	22,490	37.19
5	35,015	85.70	5,792	14.17

2. Population of 1969 Districts by Race
(402 F. Supp. at 668)

District	White Pop.	Percent	Black Pop.	Percent
1	32,377	63.4	18,564	36.6
2	21,940	56.3	17,004	43.7
3	29,000	59.6	19,652	40.4
4	29,260	68.0	13,750	32.0
5	17,974	53.9	15,362	46.1

3. Population of 1973 Districts by Race
(402 F. Supp. at 668)

District	White Pop.	Percent	Black Pop.	Percent
1	30,289	70.5	12,695	29.5
2	20,077	46.6	22,984	53.4
3	31,237	72.3	11,962	27.7
4	29,260	68.0	13,750	32.0
5	19,689	46.0	23,066	54.0

4. Voting Age Population of 1973 Districts by Race
(402 F. Supp. at 669) (Ex. P-54)

District	White VAP	Percent	Black VAP	Percent
1	20,566	74.7	6,957	25.3
2	13,632	52.0	12,595	48.0
3	21,210	76.4	6,555	23.6
4	19,868	72.5	7,535	27.5
5	13,369	51.4	12,640	48.6

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

PEGGY J. CONNER, ET AL., *Plaintiffs,*

VS.

CLIFF FINCH, ET AL., *Defendants,*

and

UNITED STATES OF AMERICA, *Plaintiff-Intervenor,*

(FILED OCTOBER 8, 1976)

Plaintiffs' Supplement to Motion to Alter or Amend Judgment

Private plaintiffs, by their attorneys, hereby supplement their motion to alter or amend this Court's Judgment of September 8, 1976, filed September 20, 1976, by suggesting to the Court the following options and alternative plans, devised according to the criteria established by the Court, namely, based on 1970 Census data, with districts delineated exclusively by county lines, supervisors' district (beat) lines, and where necessary voting precincts, as alternatives to the districts devised by the Court and included in its orders of August 24, 1976, and September 8, 1976. These proposed alternatives are submitted in response to the letter from Honorable J. P. Coleman, Circuit Judge, to counsel for the plaintiffs, of September 22, 1976, in an effort to attempt to settle the differences among the parties in this longstanding case.

1. *Senate Plan.* Plaintiffs propose as an alternative to the court-ordered Senate plan, in accordance with the criteria established by the Court, the Modified Henderson County Senate Boundary Plan attached hereto as Exhibit A. This plan is based on Exhibit C to plaintiffs' motion to

alter or amend judgment. All multi-member districts have been subdivided into single-member districts along beat and precinct lines. Where beats are used, we have used the current beat boundaries currently in use in each respective county. Where beat and precinct population cannot be determined directly from Census data, we have estimated beat and precinct population based on 1970 Census enumeration districts.[1]

The modified Henderson plan provides 52 single-member districts with a total deviation of only 13.66 percent. Only 9 of the 52 districts have variances which exceed 5 percent, plus or minus. These variances are necessitated by adhering to the court-established criteria of delineating districts along county, beat, and precinct lines. The county lines of 67 counties are preserved intact without any fracturing of county lines (including Hinds, Harrison, and Jackson Counties, in which districts are formed within county boundaries). Only 15 counties are split up to create single-member districts which cross county lines.

In addition, black majority areas which are split up and divided in the Court's plan creating districtwide white majorities, such as Claiborne and Jefferson Counties, are not split up in the modified Henderson plan.

The Court's plan, by comparison, has a total deviation of 16.7 percent by the Court's figures, and 18.32 percent, by our figures which are based on 1970 Census data. Fifteen districts exceed a variance of 5 percent, plus or minus, by the Court's figures. The Court's plan fractures and splits up 19 counties.

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[1] Districts 48, 49, 50, 51, and 52 are the same districts defined by the Court's plan; we accept the Court's figures although we have been unable to verify them using 1970 Census data. Districts 41 and 42 are slightly altered from the Court's plan; but again we accept the Court's figures.

Although our statistics based on 1970 Census data show that 14 districts in the Court plan are black population majority districts, as opposed to 13 districts in the modified Henderson plan, only 6 of the Court plan districts have 1975 black voting age population majorities. We estimate the 7 of the modified Henderson plan districts have 1975 block voting age population majorities.

2. *House Plan.* Without attempting completely to redraw the Court's House plan, we have attempted to make adjustments within the districts established by the Court's plan to cure the excessive population variances (over 10 percent, according to 1970 Census data). Our alternative districts are attached hereto as Exhibit B. While we have not been successful in reducing all the districts to the absolute minimum, because of the necessity to work within the confines of the Court plan, we believe that these districts represent considerable improvement over the Court-drawn districts. In some instances, in order to cure excessive deviations in objected-to districts, we have had to alter adjoining districts as well, but within the perimeters of the Court-ordered plan. The following chart shows the results of this work:

Objected-To District	Variance, Court Plan (Based on estimates from 1970 Census)	Variance, Plaintiffs' Alternative (1970 Census)	
16	—13.6%	—8.40%	
23	—10.8%	—2.08%	
24	—15.4%	—10.9%	
		Alternative 1	Alternative 2
34	+11.0%	—4.34%	—3.50%
45	+12.0%	—4.18%	
53	—45.63%	—7.61%	
54	+43.25%	—2.90%	
55	—20.96%	—6.64%	
56	—16.3%	—10.97%	

As previously indicated, we also accept Special Master W. D. Neal's suggested alternative proposal for House Districts 60, 78, 79, and 80.

3. *Special Elections.* Should the Court alter its Senate plan or House plan to incorporate all or any of these suggested alternative plans, we amend our motions for special elections to include any new black majority districts accepted by the Court for the reasons set out in our motions.

Respectfully submitted,

/s/ Frank R. Parker
FRANK R. PARKER
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

Exhibit A

MODIFIED HENDERSON SENATE COUNTY BOUNDARY PLAN

Based on 1970 Census Data

Senate District	Description	Total Pop.	Variance	Black	% Black
1	Alcorn County; Tishomingo County	42,119	—1.20%	3,859	9.2%
2	Benton County; Tippah County; Union County	42,453	—0.41%	8,674	20.4%
3	Marshall County; Tate County	42,571	—0.14%	23,651	55.6%
4	DeSoto County; Tunica County: Beats 1, 2, 3, and 5	45,385	6.46%	19,255	42.4%
5	Coahoma County; Tunica County: Beat 4	42,801	0.39%	27,983	65.4%
6	Panola County; Quitman County	42,717	0.20%	22,873	53.5%
7	Lafayette County; Pontotoc County	41,544	—2.55%	9,802	23.6%
8	Lee County: Beats 1, 2, 3, and 4 Prentiss County: Beat 3	40,643	—4.67%	8,186	20.1%
9	Itawamba County; Lee County: Beat 5; Prentiss County: Beats 1, 2, 4, and 5	42,440	—0.45%	4,667	11.0%
10	Bolivar County: Beats 1, 2, 3, 4, and Boyle Precinct	43,979	3.16%	26,501	60.3%
11	Sunflower County; Bolivar County: Beat 5 less Boyle precinct	42,477	—0.36%	27,098	63.8%

12	Tallahatchie County; Leflore County: Beats 1 and 2, West Greenwood, Schlater precincts	40,807	—4.28%	20,802	51.0%
13	Holmes County; Leflore: Beats 4 and 5; Central Greenwood precinct	43,762	+2.65%	30,947	70.7%
14	Carroll County; Grenada County; Yalobusha County	41,166	—3.43%	18,275	44.4%
15	Cahloun County; Chickasaw County; Webster County	41,475	—2.71%	12,042	29.0%
16	Oktibbeha County; Clay County: Beats 3, 4 and 5	40,282	—5.51%	15,462	38.4%
17	Monroe County; Clay County: Beats 1 and 2	41,353	—3.00%	14,247	34.5%
18	Attala County; Choctaw County; Montgomery County	40,928	—3.99%	16,056	39.2%
19	Noxubee County; Winston County; Lowndes County: Beat 4	41,554	—2.53%	22,663	54.5%
20	Lowndes County, less Beat 4	40,840	—4.20%	10,168	24.9%
21	Washington County: Beats 2, 3 and 4, less Arcola precinct	41,292	—3.15%	22,010	53.3%
22	Sharkey County; Issaquena County; Washington County: Beats 1 and 5, Arcola precinct	40,963	—3.92	23,932	58.4%
23	Humphreys County; Yazoo County	41,904	—1.70%	24,039	57.4%

24	Warren County	44,981	5.51%	18,355	40.8%
25-29	Hinds County *	214,964	0.84%	84,064	39.1%
30	Madison County; Rankin County: Beats 2 and 4, less Shiloh, Crossroads and South Pelahatchie precincts	45,206	+6.04%	NA	NA
31	Smith County; Rankin County: Beats 1, 3 and 5, Shiloh, Crossroads and South Pelahatchie precincts	41,904	—1.71%	NA	NA
32	Kemper County; Neshoba County; Leake County: Beats 1, 2, 3, and 5	44,307	3.93%	14,614	33.0%
33	Newton County; Scott County; Leake County: Beat 4	44,165	3.59	13,427	30.4%
34	Lauderdale County: Beats 1, 3 and 4, less Jones Store and Clarksdale precincts	40,888	—4.09%	9,696	23.7%
35	Clarke County; Lauderdale County: Beats 2 and 5, Jones Store, Clarksdale precincts	41,248	—3.25%	16,330	39.6%
36	Claiborne County; Copiah County; Jefferson County	44,130	3.51%	26,955	61.1%
37	Adams County; Franklin County	45,304	6.26%	20,974	46.3%

* Subject to outcome of appeal in *Kirksey* v. *Board of Supervisors of Hinds County*.

38	Amite County; Wilkinson County; Pike County: Beats 1, 2 and 5	42,990	0.84%	22,594	52.6%
39	Lincoln County; Pike County: Beats 3 and 4	39,826	—6.58%	13,709	34.4%
40	Lawrence County; Simpson County; Walthall County	43,584	2.23%	14,926	34.2%
41	Jefferson Davis County; Covington County; Jones County: Beat 5, County Barn and Ellisville Courthouse precincts	42,306	0.77%	NA	NA
42	Jones County: Beats 1, 2, 3, and 4, less Ellisville Courthouse and County Barn precincts	40,989	—3.9%	NA	NA
43	Greene County; Jasper County; Wayne County	41,189	—3.39%	14,764	35.8%
44	Lamar County; Marion County; Pearl River County: Beat 2	43,705	2.51%	NA	NA
45	Hancock County; Pearl River County: Beats 1, 3, 4, and 5	39,564	—7.20%	NA	NA
46	Forrest County, less Beat 5	44,109	3.46%	12,937	29.3%
47	George County; Perry County; Stone County; Forrest County: Beat 5	43,365	1.72%	6,912	15.9%

48	Harrison County: the City of Gulfport and Precinct 11 in the City of Biloxi	45,208	+6.0%
49	Harrison County: all of the City of Biloxi except Precinct 11	44,069	+3.4%
50	Harrison County: all that part outside the Cities of Biloxi and Gulfport	45,305	+6.3%
51	Jackson County: all that part outside the Cities of Moss Point and Pascagoula plus the Precinct of Bayou Casotte No. 4	44,269	+3.8%
52	Jackson County: the City of Moss Point; all of the City of Pascagoula except the precinct of Bayou Casotte No. 4	43,706	+2.5%

Exhibit B

PLAINTIFFS' SUGGESTED ALTERNATIVE HOUSE DISTRICTS

1. Tunica and Coahoma Counties.

House District	Description	Total Pop.	Variance	Black	% Black
8	Tunica County (less Two Mile Lake Precinct); Coahoma County: Precincts of Lula (1-1) Friars Point (2-1) Farrell (2-2) Sherard (2-3)	16,808	—7.53%	12,369	73.59%
15	Coahoma County: Beat 3 Coahoma (1-2) Lyon (1-3) Clarksdale (1-4) Clarksdale (2-4)	17,503	—3.68%	8,564	48.93%
16	Coahoma County: Beats 4 and 5	16,644	—8.04%	12,514	75.19%

District 17 remains unchanged

2. Bolivar and Sunflower Counties.

22	Bolivar County: Precincts of Duncan Alligator Shelby Mound Bayou Gunnison Rosedale	16,259	—10.52%	12,621	77.67%
23	Bolivar County: Precincts of Merigold E. Cleveland E. Central Cleveland Central Cleveland W. Cleveland N. Cleveland	17,793	—2.08%	7,475	42.01%

24	Bolivar County: Precincts of Shaw Boyle Skene Longshot Strongtown Scott Benoit Pace Sunflower: Precinct of Fairview-Hale	16,189	—10.9%	10,386	64.20%
25	Sunflower County: Precincts of Inverness Indianola (1) Moorhead Indianola (2) Sunflower Indianola (3) Heathman	18,011	—0.08%	12,221	67.85%
26	Sunflower County: Precincts of Boyer Doddsville Linn Ruleville Dockery Drew Rome Indianola (2)	18,204	+ .18%	10,462	57.5%

3. Issaquena and Washington Counties

ALTERNATIVE ONE

32	Issaquena County Washington County: Precincts of Glen Alian (1-4) Avon (2-3) Wayside (1-3) Hollandale (5-1) Darlove (5-2) Arcola (2-4) Ward's Rec. Center (2-1)	18,165	—0.03%	10,015	55.13%
33	Washington County: Precincts of Italian Club (3-1) Episcopal Church (1-2) Community Center (2-2) County Rec. Center (5-4)	19,376	+6.63%	7,184	37.08%
34	Washington County: Precincts of Brent Center (3-2) Police Station (3-3) Extension Bldg. (1-1) American Legion (3-4)	17,383	—4.34%	10,831	62.31%
35	Washington County: Precincts of Leland City Hall (4-2) Leland Light Plant (4-3) Industrial Center (5-5) County Barn (4-1) Bourbon (5-3)	18,394	+1.22%	12,128	65.93%

ALTERNATIVE TWO

32	Issaquena County Washington County: Precincts of Glen Allan (1-4) Arcola (2-4) Leland City Hall (4-2) Hollandale (5-1) Darlove (5-2) Bourbon (5-3)	18,565	+2.17%	12,097	65.16%
33	Washington County: Precincts of Episcopal Church (1-2) Wayside Laundry (1-3) Ward's Rec. Center (2-1) Avon (2-3) Italian Club (3-1) County Rec. Center (5-4)	18,610	+2.42%	4,672	25.10%
34	Washington County: Precincts of Extension Building (1-1) Community Center (2-2) Brent Center (3-2) Police Station (3-3)	17,534	—3.50%	11,657	66.48%
35	Washington County: Precincts of County Barn (4-1) Leland Light Plant (4-3) American Legion (3-4) Industrial Center (5-5)	18,609	+2.41%	11,732	63.04%

4. Lowndes County

45	Lowndes County: Precincts of Airbase Caledonia Rural Hill School New Hope School Fairview School Coleman Elem. School Caldwell School	17,412	—4.18%	4,753	27.30%

46	Lowndes County: Precincts of Brandon School Lee High School Stokes Beard Sale School Franklin School Hunt School	17,716	—2.50%	5,951	33.60%

5. Sharkey, Humphreys, Beat 5, Yazoo, and Warren Counties

47	Sharkey County Humphreys County: Beat 5 Yazoo County: Precincts of Eden Free Run West Midway East Midway Harttown Holly Bluff Carter Lake City	16,357	—9.98%	10,748	65.71%
53	Warren County: Precincts of Yokena Jett Jonestown Fire Station No. 7 Redbone Goodrum Beechwood	16,788	—7.61%	4,706	28.0%
54	Warren County: Precincts of American Legion Central Fire Station St. Aloysius Auditorium Walters Brunswick	17,643	—2.90%	10,459	59.28%

55	Warren County: Precincts of Tingle Culkin Bovine Kings Cedar Grove Oak Ridge Redwood Yazoo County: Precincts of Satartia Phoenix Mechanicsburg West Bentonia Benton Deasonville Fugates	16,965	—6.64%	6,691	39.44%
56	Yazoo County: Precints of South City Hall Valley Robinette Center Ridge Zion West Lintonia East Lintonia East Court House West Court House North City Hall Enola Fairview	16,177	—10.97%	7,855	48.56%

Exhibit A

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

PEGGY J. CONNOR, ET AL., *Plaintiffs,*

v.

CLIFF FINCH, ET AL., *Defendants,*

and

UNITED STATES OF AMERICA, *Plaintiff-Intervenor.*

(FILED NOVEMBER 18, 1976)

Final Judgment

In accordance with the opinions of the court entered on August 24, 1976, September 8, 1976, and November 12, 1976, it is ORDERED, ADJUDGED, AND DECREED, the defendants, Cliff Finch, Governor of Mississippi, A. F. Summer, Attorney General of Mississippi, Heber Ladner, Secretary of State of Mississippi, Evelyn Gandy, Lieutenant Governor of Mississippi and Presiding Officer of the Mississippi Senate, Wlliam B. Alexander, President Pro Tempore of the Mississippi Senate, and C. B. "Buddie" Newman, Speaker of the Mississippi House of Representatives, their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with them, are permanently restrained and enjoined as follows:

1. The following permanent legislative reapportionment plans are hereby ordered into full force and effect for the regular quadrennial elections of 1979 and thereafter until altered according to law.

2. Except in those instances in which a special election is ordered, these plans shall not affect the terms of office of legislators elected in 1975.

3. In the event of the death, resignation or removal from office of a legislator presently in office, the vacancy so created shall be filled by a special election in the district promulgated for 1979 in which the legislator shall have resided at the time of such death, resignation or removal from office.

4. The removal by a legislator of his residence from one place to another within the district for which he was elected in 1975 shall not affect the term of office for which he was elected.

5. The 52 members of the Mississippi State Senate to be chosen in the quadrennial election year of 1979 shall be elected from districts consisting of the specified counties, beats, and precincts as follows:

SENATE DISTRICTS

District Number	Description
1	DeSoto County;
	Marshall County: Beat 3
2	Lafayette County;
	Marshall County: Beats 1, 2, 4, and 5
3	The Counties of Benton, Pontotoc, and Union
4	The Counties of Alcorn and Tippah

5	The Counties of Prentiss and Tishomingo
	Itawamba County: Beats 1 and 2
6	Lee County
7	Monroe County;
	Itawamba County: Beats 3, 4, and 5
8	Lowndes County: less Air Base Precinct
9	The Counties of Chickasaw and Clay
	Lowndes County: Air Base Precinct
10	The Counties of Choctaw, Montgomery, and Webster;
	Calhoun County: Beats 1, 2, 4, and 5
11	The Counties of Panola and Yalobusha;
	Calhoun County: Beat 3
12	The Counties of Tate and Tunica;
	Quitman County: Beats 1, 2, 3, and 5
13	Coahoma County;
	Quitman County: Beat 4
14	Bolivar County: except the Precincts of Shelby and Duncan-Alligator

15	Sunflower County;
	Bolivar County: the Precincts of Shelby and Duncan-Alligator
16	Washington County: Beats 1, 3, and 4
17	Humphreys County;
	Washington County: Beats 2 and 5
18	Leflore County
19	The Counties of Grenada and Tallahatchie
20	The Counties of Carroll and Leake;
	Attala County: Beats 1, 2, 3, and 4
21	The Counties of Neshoba and Winston;
	Attala County: Beat 5
22	The Counties of Noxubee and Oktibbeha
23	Kemper County;
	Lauderdale County: Beats 1 and 3
24	Clarke County: Beat 4
	Lauderdale County: Beats 2, 4, and 5
25	The Counties of Jasper and Smith;

Clarke County: Beats 1, 2, 3, and 5

26 The Counties of Newton and Scott

27 Rankin County

28 Madison County;

Holmes County: Beats 2 and 3

Yazoo County: Beats 2 and 4

29 The Counties of Issaquena and Sharkey;

Holmes County: Beats 1, 4, and 5

Yazoo County: Beats 1, 3, and 5

30 Warren County

31 Hinds County: Beat 1

32 Hinds County: Beat 2

33 Hinds County: Beat 3

34 Hinds County: Beat 4

35 Hinds County: Beat 5

36 Simpson County;

Copiah County: Beats 1, 2, 4, and 5

38	Jefferson County;
	Adams County: Beats 1, 2, 4, and 5
39	The Counties of Amite, Franklin and Wilkinson;
	Adams County: Beat 3
40	Pike County;
	Walthall County: Beats 1, 2, and 3
41	The Counties of Lawrence and Marion;
	Jefferson Davis County: Beat 2
	Walthall County: Beats 4 and 5
42	Covington County;
	Jefferson Davis County: Beats 1, 3, 4, and 5
	Jones County: Beat 5, and the Precincts of County Barn and Ellisville Courthouse
43	Jones County: Beats 1, 2, 3, and 4, less the Precincts of County Barn and Ellisville Courthouse
44	Forrest County: Beats 1, 2, and 3; the Precincts of Camp School, Dixie Pine, Hawkins Junior High, Rowan

	High, William Carey, and McCallum
45	The Counties of Lamar and Perry;
	Forrest County: Beat 5 and the Precincts of County A.H.S. and McLaurin
	Stone County: Beats 1 and 2
46	The Counties of George, Greene, and Wayne;
	Stone County: Beats 3, 4, and 5
47	The Counties of Hancock and Pearl River
48	Harrison County: the City of Gulfport and Precinct 11 in the City of Biloxi
49	Harrison County: all of the City of Biloxi except Precinct 11
50	Harrison County: all that part outside the Cities of Biloxi and Gulfport
51	Jackson County: all that part outside the Cities of Moss Point and Pascagoula plus the Precinct of Bayou Casotte No. 4

52	Jackson County: the City of Moss Point; all of the City of Pascagoula except the Precinct of Bayou Casotte No. 4

6. For the regular quadrennial election of 1979, and thereafter until changed according to law, the 122 members of the Mississippi House of Representatives shall be elected from 122 districts as follows:

HOUSE DISTRICTS

District Number	Description
1	DeSoto County: Beat 3, Beat 4, and the Precinct of Hernando East
2	DeSoto County: Beat 1, Beat 2, and the Precincts of Alphaba, Lewisburg West, Love, Nesbit East and Pleasant Hill
3	Marshall County: Beats 1, 2, 3, and 4
4	Benton County; Marshall County: Beat 5; Lafayette County: Beats 2 and 3
5	Tippah County; Prentiss County: Beat 2
6	Alcorn County: Beat 1, Beat 4, Beat 5, and the

	Precincts of Biggersville and Rienzi
7	Tishomongo County: Beats 1, 2, 3, and 4
	Alcorn County: Beat 2, and the Precinct of South Corinth
8	Coahoma County: The Precincts of Coahoma, Lula, Lyon, and Jonestown;
	Tunica County: Beats 1, 2, 3, and 4; also Armory Precinct
9	Tate County;
10	Panola County: Beats 1, 2, and 5
11	Panola County: Beats 3 and 4;
	Yalobusha County: Beats 1, 2, 3, and 4
12	Lafayette County: Beats 1, 4, and 5
13	Union County;
14	Prentiss County: Beats 1, 3, 4, and 5;
	Tishomingo County: Beat 5
15	Coahoma County: Beat 2 and all Clarksdale Precincts in Beats 1 and 3

16 Coahoma County: Beat 4, Beat 5, and Mattson Precinct

17 Quitman County;

Tunica County: The Precinct of Two Mile Lake

18 Pontotoc County;

19 Lee County: Beat 1, Beat 2, and Belden Precinct

20 Lee County: The Precincts of Auburn, Bissell, East Heights North, East Heights South, Eggville, Gilvo, Mooreville, Old Union, Palmetto, Tupelo III, Tupelo IV, Tupelo V, and Verona

21 Itawamba County;

Lee County: The Precincts of Petersburg, Plantersville, and Richmond

22 Bolivar County: Beat 1, and the Precincts of Pace, Longshot, Shaw, Skene, and Stringtown;

Sunflower County: The Precinct of Boyer-Linn

23 Bolivar County: The Precincts of Central Cleveland,

East Central Cleveland, East Cleevland, West Cleveland, and Boyle

24 Bolivar County: Beat 3, and the Precincts of North Cleveland and Marigold

25 Sunflower County: Beat 1, Beat 3, and the Precinct of Moorhead

26 Sunflower County: Beat 5; Sunflower and Indiahola Precincts in Beat 2; Dockery, Doddsville, and Ruleville Precincts in Beat 4

27 Tallahatchie County: Beats 1, 2, 4, and 5, and the Precinct of Paynes

28 Calhoun County;

Yalobusha County: Beat 5

29 Chickasaw County;

Lee County: The Precincts of Pleasant Grove and Shannon

30 Monroe County: Beat 4, and the Precincts of Aberdeen III, Lackey, Central Grove,

Boyd's (Pine Grove),
Nettleton,
Willis, and Wren

Lee County: The Precincts of Brewer,
Kedron, and Nettleton

31 Monroe County: Beat 1, Beat 2, and
the Precincts of
Amory V,
Bartahatchie,
Bigbee, Gattman,
Grubb Springs, and
Hamilton

32 Issaquena County;

Washington County: Beat 1, and the
Precinct of Avon

33 Washington County: The Precincts of
Ward Center,
Community Center,
Arcola, and
Hollandale

34 Washington County: Beat 3, and the
Precinct of New
County Garage

35 Washington County: The Precincts of
Darlove, Bourbon,
County Recreation
Center, Industrial
College, Leland
Health Clinic, and
Leland Light Plant

36 Leflore County: Beat 1, Beat 3, and
the Precinct of Money

37 Leflore County: Beats 4 and 5

38 Carroll County;

Leflore County: The Precincts of Northeast Greenwood and East Greenwood

Attala County: Beat 3, less Possumneck Precinct

39 Grenada County: Beats 1, 3, 4, and 5;

Tallahatchie County: Beat 3, less Paynes Precinct

40 Montgomery County;

Grenada County: Beat 2

41 The Counties of Choctaw and Webster;

42 Clay County;

43 Oktibbeha County: Beats 1, 3, 4, and the Precinct of Hickory Grove

44 Oktibbeha County: Beat 5, and the Precincts of Northeast Starkville, and Osborn;

Lowndes County: The Precincts of Mayhew, West Lowndes, Barrow, and University

45 Lowndes County: The Precincts of Air Base, Caledonia, Rural Hill, New Hope, Fairview, and Coleman

46 Lowndes County: The Precincts of
Brandon, Lee High,
Stokes-Beard,
Sale, Franklin,
Caldwell, and Hunt

47 Sharkey County:

Humphreys County: Beat 5;

Yazoo County: The Precincts of
Carter, Lake City,
Zion, Eden, Free
Run, East Midway,
West Midway,
Harttown, Enola,
Fairview, and
Holly Bluff

48 Humphreys County: Beats 1, 2, 3,
and 4;

Holmes County: The Precincts of
Coxburg, Tchula,
and Thornton

49 Holmes County: Entire County,
less the Precincts
of Coxburg, Tchula,
and Thornton

50 Attala County: Beats 1, 2, 4, 5,
and the Precinct of
Possumneck

51 Winston County;

52 Noxubee County;

Lowndes County: The Precincts of
Crawford and
Artesia

53	Warren County: The Precincts of Yokena, Redbone, Goodrow, Tingle, Beechwood, Culkin, Kings, St. Aloysius, and American Legion (Blackburn)
54	Warren County: The Precincts of Jett, Fire Station #7, and Jonestown
55	Warren County: The Precincts of Bovina, Oak Ridge, Redwood, Walters, Brunswick, Cedar Grove, Auditorium and Central Fire Station
	Yazoo County: The Precincts of Dover, East Bentonia, West Bentonia, Phoenix, Mechanicsburg, Satartia, Fugate, Deasonville, and Valley
56	Yazoo County: The Precincts of Benton, Center Ridge, Robinette, East Courthouse, West Courthouse, South City Hall, North City Hall, West Lintonia, and East Lintonia
57	Madison County: Beats 1, 4, and 5
58	Leake County;
	Neshoba County: The Precincts of Hays, Turner, Dixon, and Groves

59	Neshoba County: The entire county, less the Precincts of Hays, Turner, Dixon, and Groves
60	Kemper County
	Lauderdale County: All Precincts in Beats 1 and 2 outside the City of Meridian; the Precincts of Obadiah and Shucktown in Beat 3
61	Hinds County: Precincts 17, 35-38, 42-45, Twin Pines
62	Hinds County: Precincts 27, 29, 39-41, 79-83, Liberty Grove
63	Hinds County: Precincts 1, 5, 6, 8, 9, 14-16, 32-34
64	Hinds County: Precincts 12, 13, 21-23, 28, 30
65	Hinds County: Precincts 2, 4, 10, 11, 18, 19, 50
66	Hinds County: Precincts 20, 31, 52, 55-57, 61
67	Hinds County: Precincts 47, 51, 53, 58, 63, 64, 66
68	Hinds County: Precincts 24-26, 54, 59, 60, 62, 67-69
69	Hinds County: Precincts 49, 70-77

70 Hinds County: Precincts of
Bolton,
Brownsville,
Clinton 1,
Clinton 2,
Clinton 3,
Clinton 4,
Cynthia,
Flag Chapel,
North Clinton,
Pocahontas,
Presidential Hills,
Tinnin

71 Hinds County: Precincts of
Cayuga,
Edwards,
Fairfax,
Hickory,
Learned,
Midway,
Raymond 1,
Raymond 2,
Van Winkle 1,
Van Winkle 2

72 Hinds County: Precincts of
Briarcliff,
Byram,
Chapel Hill,
Dry Grove,
Forest Hill,
Old Byram,
Red Hill,
Terry,
Utica 1,
Utica 2,
Woodville Heights

73 Rankin County: Beat 2;
Madison County: Beats 2 and 3

74 Rankin County: Beats 4 and 5

75 Rankin County: Beats 1 and 3

76 Scott County: Beats 1, 2, 4, and 5

77 Newton County;

78 Lauderdale County: Meridian City Precincts 1, 2, 3, 7 and 8, and the County Precincts of School Gap and Nellieburg in Beat 3

79 Lauderdale County: Meridian City Precincts 5, 6, 9, 13, 14, 15, 16, 17, and 18, and the Precinct of East Bonita

80 Lauderdale County: All Precincts in Beat 3 outside the City of Meridian except Obadiah, Shucktown, School Gap and Nellieburg; All Precincts in Beat 4 except Meridian Precinct No. 13; All Precincts in Beat 5 outside the City of Meridian except East Bonita

81 The Counties of Claiborne and Jefferson;

82	Copiah County: Beat 1, Beat 4, Beat 5 and the Precincts of East Hazlehurst, West Hazlehurst, Barlow, Glancy, and Allen
83	Lawrence County;
	Copiah County: Beat 2 and the Precincts of Ainsworth and Martinsville West;
	Simpson County: The Precincts of Bredgeport, Pinola, and Shivers
84	Simpson County: Beat 1, Beat 2, Beat 3, Beat 5; the Precincts of Magee North and Magee South
85	Smith County;
	Scott County: Beat 2
86	Jasper County: Beats 1, 3, 4, and 5;
	Jones County: The Precincts of Gitano, Matthews, and Shady Grove
87	Clarke County;
	Jasper County: Beat 2
88	Adams County: Beats 1 and 2, and the Precincts of Liberty Park, Concord, and Palestine

89 Adams County: Beats 4 and 5, and the Precinct of Somerset

90 Franklin County;

Lincoln County: Beat 4, and the Precincts of Caseyville, Loyd Star, Old Red Star, Vaughn, and Zetus

91 Lincoln County: Beat 1, Beat 2, Beat 3, and the Precinct of Northwest Brookhaven

92 Jefferson Davis County: Beats 1, 3, 4, and 5;

Covington County: Beat 3, Beat 4, Beat 5, and the Precincts of South Collins and Eminence

93 Jones County: Beat 2, and the Precincts of West Jones, Mason School, 26th Street Fire Station, and Lamar School

94 Jones County: Beat 3, and the Precincts of Sharon, Sandersville, City Barn, Maddox School, Stone Deavours School

95 Jones County: Beat 4, and the
Precincts of
Moselle, Pendorf,
Pine Grove, Rainey,
South Jones, and
Shelton

96 Wayne County;

97 Wilkinson County;

Amite County: Beats 1, 2, and 3

98 Amite County: Beats 4 and 5

Pike County: Beats 4 and 5

99 Pike County: Beats 1, 2 and 3

100 Walthall County;

Jefferson Davis County: Beat 2;

Marion County: The Precincts of
Goss, Morgantown,
White Bluff,
Stovall, and Kokomo

101 Marion County: Entire County except
the Precincts of
Goss, Morgantown,
White Bluff, Stovall,
and Kokomo

102 Lamar County;

Covington County: Beat 1, and the
Precincts of
Richmond and
Sanford

103 Forrest County: The Precincts of
Lillie Burney,
Woodley School,

Jones School,
Petal High,
East Bowie,
Petal-Harvey,
Camp School, and
Hawkins Junior High

104 Forrest County: The Precincts of
Blair High,
Eatonville,
Glendale,
Petal-Leeville,
Rawls Springs,
Macedonia,
Davis School,
Grace Christian,
and Pinecrest

105 Forrest County: The Precinsts of
Central School,
Dixie School,
Westside,
Eaton School,
Sunrise,
Walthall,
Dixie Pine,
Rowan High,
William Carey,
and Thames

106 Forrest County: The Precincts of
Forrest County A.H.S.,
McCallum,
McLaurin,
Brooklyn,
Carnes, and
Maxie;

Pearl River County: The Precincts of
Poplarville East,
Poplarville West,
Byrd Line,
Hickory Grove,
Gum Pond,
Wolf River,
Oak Hill,
Hillsdale,
Fords Creek,
Buck Branch,
White Sand,
Mill Creek,
Derby,
Progress,
Silver Run,
Steep Hollow,
Savannah,
McNeill, and
Caesar;

Stone County: Beat 2

107 The Counties of Greene and Perry

108 Pearl River County: Beat 4, and the
Precincts of
Picayune I, II,
III, and V;
the Precincts of
Ozone, Carriere,
and Salem

109 George County;

Stone County: Beats 1, 3, 4, and 5

110 Hancock County;

111 Harrison County: The Precincts of
Biloxi Nos. 1-4,
D'Iberville,
North Bay, and
White Plains

112 Harrison County: The Precincts of
Biloxi Nos. 5-7,
7A-8, Holly Hills,
and Howard Creek

113 Harrison County: The Precincts of
Stonewall,
West Handsboro,
Biloxi Nos. 9-11,
and East Handsboro

114 Harrison County: The Precincts of
Gulfport Nos. 7
and 12, New Hope,
E & W Saucier,
Gulfport No. 11,
Advance,
East Lyman,
East Orange Grove,
Peace, and
Poplar Head

115 Harrison County: The Precincts of
Gulfport Nos. 4,
5, 6, 8, and 9,
East and West
Mississippi City,
and East and West
North Gulfport

116 Harrison County: The Precincts of
Gulfport Nos. 13
and 14, Gulfport

Nos. 2, 3, and 10,
Outside Long Beach,
West Orange Grove,
West Lyman, and
Lizana

117 Harrison County: The Precincts of
Gulfport No. 1,
East Pass Christian,
West Pass Christian,
East Long Beach,
West Long Beach,
Pineville,
Delisle,
Ladner,
Vidalia, and
Riceville

118 Jackson County: Beat 1

119 Jackson County: Beat 2

120 Jackson County: Beat 3

121 Jackson County: Beat 4

122 Jackson County: Beat 5

7. Defendants shall order and direct special elections in House Districts 79 and 97 on a date to be specified by the Court. The Court shall refrain from setting dates for special legislative elections until time for an appeal has expired or until the Supreme Court shall have decided an appeal on the merits. The Court retains jurisdiction of the case for the purpose of setting dates for special elections as soon as one of the above alternatives shall have occurred.

8. Except as hereinabove set forth, all objections and motions for special elections filed by the private plaintiffs and the Department of Justice are denied.

9. All appropriate and legal costs of court are adjudged against defendants, for which judgment, when the amount is computed, will be entered against the State of Mississippi.

10. Plaintiffs' request for an award of attorney's fees is denied.

11. Fees to be allowed the special masters shall be taxed against the State of Mississippi, and the amount of such fees shall be determined after an evidentiary hearing on the reasonableness of such fees, for which jurisdiction is retained.

12. Except for the injunctive relief herein granted, and subject to the Court's retention of jurisdiction stated above, the complaint and amended complaints filed herein are dismissed.

ORDERED, ADJUDGED, AND DECREED on this the 17 day of November, 1976.

/s/ JAS. P. COLEMAN
United States Circuit Judge
for the Court, composed of
/s/ DAN M. RUSSELL, JR. and
United States District Judge
/s/ HAROLD COX
United States District Judge
(3 Judge District Court)

Approved as to form:
For the Private Plaintiffs:

/s/ FRANK S. PARKER
Attorney for Private Plaintiffs
For the United States, as Plaintiff-Intervenor:
/s/ JOSEPH E. BURNS, JR.
Attorney for Plaintiff-Intervenor
For the Defendants:
/s/ A. F. SUMMER
Attorney for Defendants

UNITED STATES COURT OF APPEALS
FIFTH JUDICIAL CIRCUIT
P. O BOX K
ACKERMAN, MISSISSIPPI 39735

December 17, 1976

JAMES D. COLEMAN
Judge

(Filed December 20, 1976)

The Clerk
United States District Court
Jackson, Mississippi 39205

Dear Mr. Clerk:

I herewith forward to you a copy of the Special Master's report dated December 8, 1976.

I think it would be well if you would please send xerox copies of this report to all counsel of record.

Sincerely yours,

/s/ JAS. P. COLEMAN
United States Circuit Judge

JPC/nc

CC: Honorable Dan M. Russell, Jr.

CC: Honorable William Harold Cox

Analysis by Special Master of Plaintiff's Objections in His Motion to Alter or Amend Judgment Under Date of November 29, 1976

December 8, 1976

Civil Action No. 3830(A)

(FILED DECEMBER 20, 1976)

Plaintiff's objections and/or motions are taken up herein in the order of their presentation.

Motion No. 1: To grant Plaintiffs a hearing on their objections to the court decreed Senate and House Plans.

Special Master's Comment: This is for the Court to determine.

Motion No. 2: To substitute in toto for the Court's Senate Plan, the proposed Modified Henderson Senate County Boundary Plan; and to substitute for the House districts to which Plaintiffs have objected the Alternative Proposals attached as Exhibit B to the Plaintiff's Supplement to Motion to Alter or Amend Judgment, filed October 8, 1976.

Grounds offered by the Plaintiff are:

1. The Court Plan is based, not on 1970 Census data or any other form of population data but is based on the votes received by the Democratic candidates for Governor in the August 5, 1976 Democratic Primary Election.

Special Master's Comments:

The statement that the Court Plan is not based on 1970 Census population data is plainly and simply a fabrication. Election data was used to help arrive at the population of voting precincts, there being no Census figures available for these smallest of political entities, but in every

case these election data were used in connection with known population data for 1970 for larger political subdivisions.

The Court has understood and recognized from the beginning that in most cases in Mississippi, population figures from the 1970 Federal Census for Beats are no longer valid (beat lines having been changed by local determination or Court order in almost every county in the state since the 1970 Census figures were arrived at). Further, the Court is well aware that Census figures have never been available for voting precincts (the final political subdivisions to which we have had to go time and time again in ths reapportionment plan and to which any other single-member plan would also have to go.)

The Court is also aware that in many cases in the Court Plan 1975 voting figures have been applied against known 1970 Census population figures in order to arrive at a calculated estimate of the population of each precinct.

As a matter of fact, the population figures of the 1970 Census have been used throughout both the Senate and the House plans as the basis for reapportionment. Each precinct's percentage of the total vote cast either in the county or in the applicable beat was applied to the population of the county or applicable beat (when the latter was known) to arrive at a calculated estimate of the population of each precinct.

No matter what method is employed in arriving at precinct population figures in Mississippi—in the present light of things—final dependence must be placed upon estimates sensibly and honestly made from the most recent and applicable data at hand.

Plaintiff No. 2: The Senate Plan "fails to provide substantial equality of population among the districts . . . .".

Special Master's comments:

As previously pointed out herein and as repeatedly brought out at previous hearings, when precincts and beats (where lines have been changed since 1970) have to be used, *some sort of an estimate has to be used* in arriving at population figures. The method employed in the Court Plan has proven to be accurate enough in test checks to be generally used and relied upon. In those Plans where Census Enumeration Districts have been used by the Plaintiffs or by anyone else, these Enumeration Districts have had to be split in multiplied numbers of cases, and in each case an estimate had to be made of the population in each part of the Enumeration District.

As to the statement that Democratic Primary Election figures were used as a basis for the determination from the Census of population of voting precincts, it is well known in Mississippi that Republicans and Independents took part in the Democratic Primary in 1975, just as they have always done. Mississippi does not have voter registration by party affiliation.

Plaintiff No. 3: The Senate Plan "cancels out, minimizes, disperses, and dilutes black voting strength."

Special Master's comments:

The Court has already found that this allegation is not true and has so stated in more than one of its decrees.

The Plaintiff as to the House Plan generally:

"Although the House plan . . . . is based on voting results . . . . our analysis based on 1970 Census data shows that a substantial number of House districts meet constitutional and equitable requirements . . . . basing the House districts on beat and precinct lines. However, a substantial

number of House districts in the Court's House plan continue unconstitutionally and inequitably to fail to provide substantial equality of population among the districts and to cancel out, minimize, disperse, and dilute black voting strength."

Special Master's comments:

These allegations are repititions of those previously made and dismissed by the Court, generally done in open meetings with all parties. Nonetheless, we will take up each separate case as presented by Plaintiffs:

AFFIDAVIT OF FRANK R. PARKER

Special Master's comment:

As to paragraphs Nos. 1 and 2 thereof no comment is necessary and none is made.

Paragraph No. 3: Mr. Parker states that he and members of his staff *"calculated"* the population for the House districts for the Court's plan included in its final judgment of November 18, 1976. He further states that in all instances in which the current precinct (and beat) lines split 1970 census enumeration districts he *"estimated"* the portions of the precinct (and beat) population lying on each side of the precinct line within the census enumeration district. (Emphasis added).

Plaintiffs admit "calculations" and "estimates" of precinct and beat populations, but using such "calculations" and "estimates" state that they "indicate" the following population and variance for each of the following House districts:

House Dist. No.		Plaintiff's Estimate Population	Plaintiff's Estimate Variance	Court House Plan Population	Court House Plan Variance
8	Tunica County: Beats 1, 2, 3 & 4, plus the Armory precinct in Beat 5			10,508	
	Coahoma County: Coahoma, Lula & Lyon precincts in Beat 1; & Jonestown precinct in Beat 3			6,305	
	TOTALS	16,733	-7.91	16,813	-7.5
	Special Master's comments: The population difference is only 80 between the two estimates. We deem this amount to be insignificant.				
15	Coahoma County: Beat 2; & the Clarksdale precincts in Beats 1 & 3	14,471	-20.36	16,677	-8.2
16	Coahoma County: Beats 4 & 5; & Mattson precinct in Beat 3	19,438	+6.97	17,465	-3.9

Special Master's comments: Census enumeration districts are split in these two districts. These splits appear in thickly populated areas. Any dependence placed upon arbitrary estimates of population on either side of a line appear hazardous.

It will be observed that Plaintiffs offer no population "estimates" either by beats or precincts here, but only for the district as a whole. Therefore, no detailed comparison can be made to determine the precincts in which

the greatest variance lies as between the two population "estimates". It is apparent, however, that Plaintiffs figures overall for District 8, 15 and 16 total but 50,642, while those in the mathematically proven Court Plan total 50,955. or 313 more. Since the Court's plan totals 40,447 population for Coahoma County (as does the 1970 Census) it would appear that Plaintiffs failed to "estimate" 313 people in that county on one or the other sides of the line.

Nonetheless, a new composition of Districts 15 and 16 could be effectuated in the following manner:

1. Begin by using Plaintiff's estimates of population;

2. To the Plaintiff's estimate for District 15, add Cagle Crossing from Beat 4 and Bobo, Rena Lara and Roundaway precincts and population from Beat 5, but using the Court's population figures for these precincts, since no such detailed figures are available in connection with the Plaintiff's estimates. Then pull these precincts from District 16;

3. Add the 313 "shortage" in Plaintiff's overall population estimate for Coahoma County.

This would result in districts as follows:

District 15. Coahoma County: Beat 2; & the Clarksdale precincts in Beats 1 & 3; & Cagle Crossing precinct in Beat 4; & Bobo, Rena Lara & Roundaway precincts in Beat 5	17,260	—5.01
District 16. Coahoma County: Mattson precinct in Beat 3; & the Clarksdale precincts in Beats 4 & 5	16,882	—7.1

The suggested changes in Districts 15 and 16 are offered solely as an alternative that might lessen Plaintiff's objec-

tions and in no wise is to be construed as an admission that these Districts in the Court Plan contain fatal flaws.

Now, to proceed further with other comparisons of the Court Plan and the Plaintiff's estimates of populations and population variances:

House Dist. No.		Plaintiff's Estimate		Court House Plan	
		Population	Variance	Population	Variance
22	Bolivar County: Beat 1; & the precincts of Pace & Longshot in Beat 2; & the precincts of Shaw, Skene & Stringtown in Beat 5			15,460	
	Sunflower County: The precinct of Boyer-Linn in Beat 4			1,227	
	TOTALS	20,067	+10.4	16,687	-8.2
23	Bolivar County: The precincts of Central Cleveland, East Central Cleveland & West Cleveland in Beat 2; & East Cleveland in Beat 4; & Boyle in Beat 5	16,209	-10.8	17,037	-6.2
24	Bolivar County: Beat 2; & the precincts of North Cleveland & Merigold in Beat 4	15,381	-15.4	16,912	-6.9

25	Sunflower County: Beats 1 & 3; & the precinct of Moorhead in Beat 2	16,594	−8.7	17,605	−3.1
26	Sunflower County: Beat 5; & Sunflower & Indianola precincts in Beat 2; & Dockery, Doddsville & Ruleville precincts in Beat 4	18,205	+0.2	18,215	+0.2

Special Master's comments:

All of these districts (Nos. 22, 23, 24, 25, and 26) represent two different estimates of population, arrived at by two different methods. As stated hereinbefore, the Special Master does not agree that Plaintiff's estimates are correct or even that they more nearly represent the actual population.

However, we have before us a copy of the Plaintiff's estimated population figures for the precincts involved in the Bolivar and Sunflower county districts. Purely in an effort to assist in bringing this unhappy affair to a definite conclusion, we have taken the Plaintiff's own figures as to population in the various precincts, an now offer newly constructed districts based thereon for whatever consideration the Court cares to give them, as follows:

House Dist. No.		New Proposed Districts Population	Black Population
22	Bolivar County: Beat 1	9,483	6,893
	Pace & Longshot precincts in Beat 2	2,564	1,596
	Skene, Shaw & Stringtown precincts in Beat 5	5,772	3,837
	TOTALS	17,819	12,328
	Percentages: Variance –1.9		
	Black Population 69.2		
23	Bolivar County: Central Cleveland & East Central Cleveland precincts in Beat 2;	4,018	2,149
	North Cleveland & East Cleveland precincts in Beat 4;	6,448	2,431
	Boyle precinct in Beat 5	4,222	2,225
	Sunflower County: Boyer-Linn precinct in Beat 4	2,248	1,515
	TOTALS	16,936	8,320
	Percentages: Variance –6.8		
	Black Population 49.1		
24	Bolivar County: Beat 3;	9,575	7,878
	West Cleveland precinct in Beat 2;	3,800	736
	Merigold precinct in Beat 4	3,527	2,593
	TOTALS	16,902	11,207
	Percentages: Variance –7.0		
	Black Population 66.3		
25	Sunflower County: Beats 1 & 3;	13,494	9,035
	Moorhead precinct in Beat 2	3,100	2,063
	TOTALS	16,594	11,098
	Percentages: Variance –8.7		
	Black Population 66.9		
26	Sunflower County: Beat 5;	8,634	4,943
	Sunflower & Indianola precincts in Beat 2;	4,771	2,727
	Dockery, Doddsville & Ruleville precincts in Beat 4	4,800	2,978
	TOTALS	18,205	10,648
	Percentages: Variance +0.2		
	Black Population 58.5		

Special Master's comments:

The physical structure of Sunflower County dictates the beat and precinct arrangement used therein. The county is exceedingly long, but very narrow. Further, we believe the wide variance in population between the two Sunflower County districts is justified by virtue of the fact that included in the population of District 26 are more than 1,500 inmates at the Mississippi State Penitentiary, located within Beat 5 and the Rome precinct.

Now we proceed ot the complaint of the Plaintiff as to the composition of and the population figures arrived at and used for the Issaquena-Washington counties area, wherein lie District Nos. 32, 33, 34, and 35. Again we compare:

House Dist. No.		Plaintiff's Estimate		Court House Plan	
		Population	Variance	Population	Variance
32	Issaquena County Washington County: Beat 1; & the precinct of Avon in Beat 2			2,737	
				15,468	
	TOTALS	17,276	–4.9	18,205	+0.2
33	Washington County: The precincts of Ward Center, Community Center & Arcola in Beat 2; & the precinct of Hollandale (City Hall) in Beat 5	16,680	–7.2	17,409	–4.2

34	Washington County: Beat 3; & the precinct of New County Garage in Beat 4	20,170	+11.0	19,472	+7.2
35	Washington County: The precincts of Leland Health Clinic & Leland Light Plant in Beat 4; & the precincts of Darlove, Bourbon, County Recreation Center, & Industrial College in Beat 5	19,012	+4.6	18,232	+0.3

Special Master's comments:

Plaintiff's estimate (above) would have 20,170 population in District 34 and a claimed variance of +11.0%. We believe this, as well as other population estimates made by the Plaintiff for Washington County, to be far from correct. An example may be seen in population estimates for the five beats. Washington County had new beat lines drawn subsequent to the year 1970. The survey and population calculations for this redistricting plan were made by Comprehensive Planners, whose plan, including population figures therein, was approved by Federal Court. Yet in no case do these population figures appear to have been used by the Plaintiffs in the preparation of their Alternate Plan for Washington County. Let us compare:

	Court Approved Population	Plaintiff's Estimated Pop.	Plaintiff Over or Under
Beat 1	14,122	12,642	–1,480
Beat 2	14,021	13,592	– 429
Beat 3	14,255	14,928	+ 673
Beat 4	14,176	14,902	+ 726
Beat 5	14,007	14,517	+ 510
TOTALS	70,581	70,581	—0—

Washington County is a particularly difficult county to reapportion. Little Issaquena County and its tiny 2,737 population is included as part of one district to help make population in each district nearer the norm of 18,171. Each Washington County beat contains in excess of 14,000 people—too few for one district and too many for one-half of a district. The City of Greenville (population 39,648) contains all or parts of some 10 of the 20 precincts. "City" precinct lines are not coterminous with corporation boundary lines, but many of them extend far out into county territory.

Seven precincts have population between 5,140 and 7,501;

Five precincts have population between 3,222 and 4,734;

Only three precincts contain less than 1,000 people;

The remaining five precincts contain between 1,240 and 2,466 people.

The geographical location of these precincts, as related to one another, makes it extremely difficult to arrive at districts of approximately equal population. But this we believe we have done in the Court Plan.

For these and other good and valid reasons we believe the population estimates shown in the Court Plan are more realistic and less subject to error than those shown in the Plaintiff's Alternate Plan, and we recommend no change in the Court Plan from that adopted for Districts Nos. 32, 33, 34, and 35 in the Final Order.

Now we take up the Plaintiff's objections to Districts 45 and 46 in Lowndes County:

House Dist. No.		Plaintiff's Estimate		Court House Plan	
		Population	Variance	Population	Variance
45	Lowndes County: The precinct of Caledonia in Beat 1; the precinct of Air Base in Beat 2; the precincts of Rural Hill New Hope & Fairview in Beat 3; & the precinct of Coleman in Beat 4	20,358	+12.0	18,641	+2.3
46	Lowndes County: The precincts of Sale & Stokes-Beard in Beat 1; the precincts of Brandon, Lee High & Franklin in Beat 2; & the precinct of Caldwell in Beat 3; & the precinct of Hunt in Beat 5	18,844	+3.7	18,162	–0.0

Special Master's comments:

There are several valid objections to the population figures used by the Plaintiff in Lowndes County. Some of these were raised by the Special Master in a memorandum to the Court in October, which was presented and discussed in meeting with all parties. This part we now repeat:

"Plaintiff estimates population here to be +12.0% variance from the norm. In his exceptions Plaintiff estimates population of Air Base to be only 2,229. Yet in the redistricting of the beats of Lowndes County the Federal Court permitted the deduction of 4,074 "non-residents" at the Air Base in Beat 2 and 1,670 "non-residents" at the University in Beat 5 from both beat and county totals and a net population of only 43,956 was used in redistricting the county—an average of only 8,791 persons per beat. But in this Legislative reapportionment we must use the entire 1970 population of the county. This population figure is 49,700 and we must use the resident population of the Air Base precinct and its "non-resident" population as well. It is apparent, therefore, that the objection to District 45 is without merit."

There are other reasons to doubt the validity of the population figure of 20,170 used by the Plaintiff as his estimate of the population of District 45.

Some time in October 1976 Plaintiff filed "Plaintiff's Supplement to Motion to Alter or Amend Judgment."

In his supplementary motion Plaintiff, among many other things, proposed, in his Exhibit B thereof, new precinct alignments for Districts 45 and 46.

For District 45 he proposed: Lowndes County precincts of Airbase, Caledonia, Rural Hill, New Hope, Fairview, Coleman and Caldwell, total population *17,412*. The precinct composition of this Plaintiff-proposed-district is exactly the same as the Court Plan, *except* that Plaintiff has

added Caldwell precinct and has arrived at a population of only *17,412* in the face of his contention in his latest "Alter or Amend" motion that the Court Plan for this district *which does not include* Caldwell, has a population of 20,358.

In that same Exhibit B the Plaintiff proposes a new alignment for District 46 which contains exactly the same precincts as in the Court Plan, except Plaintiff *omits* Caldwell. And he shows a population of *17,716*. Yet he now avers that the Court Plan, which *includes* Caldwell, totals 18,844, which latter figure is very near the Court Plan population of 18,162.

Whence came this great change in Plaintiff's estimates?

If Plaintiff's Alternative Plans were used the population of Districts 45 and 46 would total 35,128 which, when added to the Lowndes County population shown in the Court Plan for Districts 44 and 52 (to which Plaintiff has not objected) would total 48,025 for the whole of Lowndes County. What would we do with the 1,675 Lowndes County people thus lost out of its 1970 population of 49,700? Has the Plaintiff gotten as confused, perhaps, about the "non-residents" in University precinct as he did about those in Airbase precinct?

We now proceed to Warren-Yazoo Districts 53, 54, and 55, and again compare estimates of the Plaintiff with figures used in the Court Plan:

House Dist. No.		Plaintiff's Estimate		Court House Plan	
		Population	Variance	Population	Variance
53	Warren County: The precincts of Yokena, Redbone, Goodrum, Tingle; Beechwood, Culkin, Kings, St. Aloysius & American Legion (Blackburn) in whatever Beats situated	19,933	+9.70	16,928	-6.8
54	Warren County: The precincts of Jett, Fire Station No. 7, & Jonestown in whatever Beats situated	11,079	-39.03	16,492	-9.2
55	Warren County: The precincts of Bovina, Oak Ridge, Redwood, Walters, Brunswick, Cedar Grove, Auditorium, & Central Fire Station in whatever Beats situated			11,561	
	Yazoo County: The precincts of Dover, East Bentonia, West Bentonia, Phoenix, Mechanicsburg, Satartia, Fugates, Deasonville, & Valley in whatever Beats situated			5,521	
	TOTALS	19,845	+9.21	17,082	-6.0

Special Master's comments:

Warren County has presented perhaps the most difficult situation of all of the problems inherent in reapportioning the House of Representatives. First of all, Claiborne County was severed from the old Warren-Jefferson county district and added to Jefferson County in order to set up a new preponderantly black district. The population left in Warren County alone is too great for two districts and too small for three. Issaquena County to the North has already been used with Washington County to help equalize the population in the four-member situation there. Giant Hinds County to the East stands alone with its twelve districts.

Yazoo County to the Northeast offers the only county that can be joined with Warren. But before the overlapping of district lines across county boundaries has ended it is necessary to have Warren, Yazoo, Sharkey, Humphreys and Holmes counties involved in a seven-member area. The population overall of 118,943 works out to an average population of 16,922 per district—well below the population norm and leaving little "working room" for the proper arrangement of the various voting precincts into districts.

To compound the problem, the matter of the restructuring of the five supervisor's districts of Warren County has been and continues to be ensnarled in Federal Appeal Courts. So serious and involved is this matter that there were no elections for beat offices held in Warren County in 1975—all being held up pending a final settlement of the problem.

Prior to this time the Special Master has spent a disproportionate amount of time and effort trying to arrive at a fair, equitable and workable solution for the Warren-Yazoo area. He believed he had a satisfactory solution to the problem in the plan that appeared in the Court's Final Order. Not so. After careful study of the Plaintiff's objec-

tions and a review of the population figures used by the Special Master in the Court Plan, we are now of the opinion that our population figures for the precincts, while at least fairly representative of the situation prevailing in the year 1975, is perhaps somewhat off the mark in some of the precincts as regards population in the year 1970.

For the past few years there has been a tremendous shifting of population between the various areas of Warren County in and adjacent to the City of Vicksburg. This trend continues.

We do not suggest here that we are in firm agreement with precinct population estimates propounded by Plaintiff. We have nonetheless decided to use the Plaintiff's population estimates for Warren County and have just now—after numerous cases of trial and error—arrived at new districts based upon these estimates. But we cannot accept the Plaintiff's precinct arrangement, filed earlier, for the composition of districts for at least two reasons. First, population is too greatly in variance from the norm—going as far as nearly 11% in one district; and second, the absolute gerrymandering of the two other districts after gathering together every black majority precinct in the county into the first district to guarantee a heavily loaded black majority district in a county having only 40.8% population.

This revised plan, hereinbelow presented, must include all of Districts 47, 48, 49, 53, 54, 55 and 56 lying in the five counties earlier named:

House Dist. No.		New Proposed Districts Using Plaintiff's Population Estimate		
		Population	Black Population	% Black
47	Sharkey County	8,937	5,784	64.7
	Humphreys County: Beat 5; & Silver City precinct in Beat 3	4,307	3,350	77.8
	Yazoo County: Precincts of Carter, Lake City, Eden, Free Run, East Midway, West Midway, & Harttown in whatever Beats situated	3,120	2,060	66.0
	TOTALS	16,363	11,194	68.4
	Variance –9.9%			
48	Humphreys County: Beats 1, 2, & 4; & Lake City precinct in Beat 3	10,295	6,110	59.3
	Holmes County: Precincts of Coxburg, Tchula, Thornton, & Cruger	6,258	4,625	73.9
	TOTALS	16,553	10,735	64.9
	Variance –8.9%			
49	Holmes County: The entire county less the precincts of Coxburg, Tchula, Thornton, & Cruger	16,862	11,118	65.9
	Variance –7.2%			
53	Warren County: The precincts of Redbone, Yokena, Jett, Fire Station No. 7, American Legion (Blackburn), & St. Aloysius in whatever Beats situated	16,968	7,207	42.5
	Variance –6.6%			

54	Warren County: The precincts of Culkin, Beechwood, Jonestown, Kings, Cedar Grove, Auditorium, & Central Fire Station in whatever Beats situated	17,559	7,348	41.8
	Variance –3.4%			
55	Warren County: The precincts of Oak Ridge, Bovina, Redwood, Walters, Brunswick, Tingle, & Goodrum in whatever Beats situated	10,454	3,800	36.3
	Yazoo County: The precincts of Dover, East Bentonia, West Bentonia, Mechanicsburg, Phoenix, Satartia, Deasonville, Fugates, Valley, Enola, Fairview, & Holly Bluff in whatever Beats situated	6,929	3,799	54.8
	TOTALS	17,383	7,599	43.7
	Variance –4.3%			
56	Yazoo County: The precincts of Center Ridge, Robinette, Zion, East Courthouse, West Courthouse, South City Hall, North City Hall, West Lintonia, East Lintonia, & Benton in whatever Beats situated	17,255	8,720	50.5
	Variance –5.0%			

STATE SENATE

IN RE: AFFIDAVIT OF PROF. GORDON G. HENDERSON

Information received by the Special Master from the State Tax Commission and Comprehensive Planners during his preparation of the Senate Plan failed to show that the supervisor's district lines in Holmes County had been redrawn by Federal authorities in accordance with the one-man one-vote principle. Therefore, 1970 Census figures

for beat population were used in said Senate Plan districts that affected Holmes County.

Later, during the Special Master's preparation of the House Plan additional beat population figures for Holmes County (and others) were procured from Comprehensive Planners which showed that Holmes County had, in fact, been redistricted subsequent to the 1970 Census.

Busy with the structuring of the House Plan at the time, which plan was not affected by the change in beat population figures, the Special Master simply neglected to go back into source data areas already explored and therefore failed to re-structure Districts 28 and 29 affecting Holmes County.

Referring back to our voluminous files we find that we should, and can, revise Senate Districts 28 and 29, which we now proceed to do:

Senate Dist. No.		Revised Senate Districts 28 & 29		
		Unit Population	District Population	Variance
28	Madison County	29,737		
	Holmes County: Beats 2 & 3	9,387		
	Yazoo County: The precincts of Benton, Deasonville, Fugates, Eden, Free Run, East Midway, West Midway, Harttown, Carter, & Dover in whatever Beats situated	6,671	45,795	+7.4%
29	Issaquena County	2,737		
	Sharkey County	8,937		
	Holmes County: Beats 1, 4, & 5	13,733		
	Yazoo County: All precincts in whatever Beats situated that are not included in District 28	20,633	46,040	+8.0%

—William D. Neal
Special Master
December 8, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Civil Action No. 3830(A)

PEGGY J. CONNOR, et al., *Plaintiffs,*

v.

CLIFF FINCH, et al., *Defendants*

(FILED DECEMBER 21, 1976)

Before COLEMAN, *Circuit Judge;* RUSSELL, *Chief District Judge;* and COX, *District Judge.*

Order Amending Previous Judgment

The Court has before it, and has fully considered, plaintiffs' objections and motion to alter or amend judgment dated November 29, 1976. We also have before us, and have considered, the analysis of those objections by our Special Master, dated December 8, 1976.

Pursuant thereunto, it is

ORDERED, ADJUDGED and DECREED that our previous judgments in this legislative reapportionment case are hereby amended to read, for the legislative districts indicated, as follows:

MISSISSIPPI STATE SENATE

Senate Dist. No.		Unit Population	District Population	Variance
28	Madison County	29,737		
	Holmes County: Beats 2 & 3	9,387		
	Yazoo County: The precincts of Benton, Deasonville, Fugates, Eden, Free Run, East Midway, West Midway, Hartttown, Carter, & Dover in whatever Beats situated	6,671	45,795	+7.4%
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	Sharkey County	8,937		
	Holmes County: Beats 1, 4, & 5	13,733		
	Yazoo County: All precincts in whatever Beats situated that are not included in District 28	20,633	46,040	+8.0%

MISSISSIPPI STATE HOUSE OF REPRESENTATIVES

House Dist. No.		Population	Black Population	% Black	Variance
15	Coahoma County: Beat 2; & the Clarksdale precincts in Beats 1 & 3; & Cagle Crossing precinct in Beat 4; & Bobo, Rena Lara & Roundaway precincts in Beat 5	17,260			-5.01%
16	Coahoma County: Mattson precinct in Beat 3; & the Clarksdale precincts in Beats 4 & 5	16,882			-7.1%

47	Sharkey County	8,937	5,784	64.7	
	Humphreys County: Beat 5; & Silver City precinct in Beat 3	4,307	3,350	77.8	
	Yazoo County: Precincts of Carter, Lake City, Eden, Free Run, East Midway, West Midway, & Harttown in whatever Beats situated	3,120	2,060	66.0	
	TOTALS	16,363	11,194	68.4	-9.9%
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	TOTALS	17,383	7,599	43.7	-4.3%
56	Yazoo County: The precincts of Center Ridge, Robinette, Zion, East Courthouse, West Courthouse, South City Hall, West Lintonia, East Lintonia, & Benton in whatever Beats situated	17,255	8,720	50.5	-5.0%

From the evidence already heard and considered in this case, the remaining objections filed by the plaintiffs are found to be without merit and will be overruled.

So Ordered this the 17 day of December, 1976.

/s/ Jas. P. Coleman
United States Circuit Judge

/s/ Dan M. Russell, Jr.
Chief United States District Judge

/s/ Harold Cox
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

PEGGY J. CONNOR, ET AL., *Plaintiffs,*

vs.

CLIFF FINCH, ET AL., *Defendants,*

and

UNITED STATES OF AMERICA, *Plaintiff-Intervenor.*

Notice of Appeal

NOTICE IS HEREBY GIVEN that the Plaintiffs Peggy J. Connor, et al., hereby appeal to the United States Supreme Court, from the Final Judgment entered in this action on November 18, 1976, as amended by the Order Amending Previous Judgment, entered December 21, 1976.

DATED: December 27, 1976.

/s/

FRANK R. PARKER

Lawyers' Committee for Civil
Rights Under Law
233 North Farish Street
Jackson, Mississippi 38201

Attorneys for Appellants

(Certificate of Service Omitted)